

1596

*Arcana Imperii Detecta:*  
K O R,  
**Divers Select CASES**  
I N  
**GOVERNMENT;**

More particularly,

Of the Obeying the unjust Commands of a Prince.  
Of the Renunciation of a Right to a Crown.  
Of the Proscription of a limited Prince and his Heirs.  
Of the Trying, Condemning and Execution of a  
Crowned Head.  
Of the Marriage of a Prince and Princess.  
Of the Detecting Conspiracies against a Government.  
Of Subjects Revolting from a Tyrannical Prince.  
Of Excluding Foreigners from Publick Employments.  
Of Constituting Extraordinary Magistrates upon Extra-  
ordinary Occasions.  
Of Subjects Anticipating the Execution of Laws.  
Of Tolleration of Religion.  
Of Peace and War, &c.

W I T H

The *Debates, Arguments and Resolutions* of the  
greatest Statesmen in several Ages  
and Governments thereupon.

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L O N D O N:

Printed for James Knapton, at the  
Crown in St. Paul's Church-Yard, 1701.

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T H E

# PREFACE.

**T**He Ground-work of the ensuing Treatise is History (the usefullest of meer Human Studies) collected from the best Authorities, both ancient and modern, especially from those of our own Nation, of which, in so large a Field of Matter, there is as much incerted, as might be thought proper to make the whole useful and diverting, and they, for the greater variety are interspersed here and there throughout the Work: And for the Subject-matter, it principally, if not wholly, refers to Government, without which no Nation or Community of Men can long sub-

## To the Reader.

list, but all must be quickly reduced to a *Babel* of Confusion.

The Method is easie and obvious, tho' perhaps novel to us; for first you have the Historical Case recited and the Query upon it, with as much Perspicuity and Brevity as the Subject would admit of; then the Arguments *Pro* and *Con*, with Replications and Rejoynders, where there were any, are distinctly digested under Heads, for better Method and easier Understanding: Next unto which comes the Resolution upon the whole; after that, the Event which followed; and lastly, the Author's Judgment, of which he'll adventure to say nothing himself; but leaves that entirely to the favourable Censure and Judgment of others.

As the Cases are mostly of different Natures, and taken from the Accidents and Authorities of different Times and Nations, a natural Dependence upon and Connection be-



## *To the Reader.*

between each other, could not well be expected: But as this may serve for a reason why they many times not only seem, but actually do follow in a promiscuous manner, so the Author is oblig'd to declare his main Intention in the Series of them, was to surprize his Reader with new Variety of Matter, resulting from different Occasions, Persons and Ages as he goes on in the Perusal of them.

However, to give somewhat of a clearer Idea of the whole, within the Compass of a short Paragraph, you have here great Variety of Cases, adapted to all Qualities and Degrees of Men: As for Princes, to whom every thing in general relates in a Government, yet more particularly you have an Enquiry made into the Conveniency or Inconveniency of their heading Armies in foreign Countries; Marriages; Renunciation of Right to a Crown; Limitation

## *To the Reader.*

tation of Power and Proscription, together with their Deposition and just Infliction of Punishment upon them (when deposed) for Conspiracies against their Protectors, as well as the readiest Way to detect ill Designs against themselves: Then for Statesmen, besides what will be found more immediately to relate to them, in respect to their Execution of a Prince's unjust Commands, and such as they foresee will occasion Tumults and Dangers in a Government, there are Multitudes of other Things too tedious to enumerate, which falls under their Cognizance, as well as their Superiors, when they have any; such as Matters of Peace and War, Treaties, Leagues, Truces, Pacifications, Taxes, good Laws, Exclusion of Foreigners from Publick Offices; Farming of Revenues, Remedying the ill State of Coin, Stipends, Pretentions upon other Governments; Reviving of old Customs; Remitting or Pay-  
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## *To the Reader.*

ing Publick Debts, Erecting of Fortresses in Neutral Countries, the Disposing of Warlike Spoils, Military Tumults, Tolleration of Religion, and the like : Lastly as to the People ; Subjects are here inform'd what to do, in respect to a Revolt from a tyrannical Prince, as well as how they are to be dealt with when reduced according the various Circumstances of Cases and Times : Also their Abusing of Privileges, Anticipating the Execution of Laws, with other Offences ; Payment of Debts in the Time of War and Difficulty ; Constituting extraordinary Magistrates upon extraordinary Occasions, with much more throughout the Work are considered and discussed, which, 'tis hoped, may prove very agreeable to the Reader, who is referred thereunto for his further satisfaction.

To conclude ; As the Author assumes little more herein to himself



## *To the Reader.*

than the bare Collecting and Digesting of the Matter into the Form you find it; so it may without Vanity be said, That you have represented in this small Compass a great part of the State-policy, Learning, Integrity and Judiciousness of the Wiser, Better and Politer sort of Mankind, in the several Countries and Centuries as well as different Constitutions and Governments wherein they flourished and acted so noble a part in their Day and respective Stations.

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THE



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*Arcana*



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*Arcana Imperii Detecta:*  
O R,  
Divers Select CASES  
I N  
GOVERNMENT, &c.

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CASE I.

*Whether a Prince's Command is sufficient to excuse his Councillors and Ministers, so far as to exempt them from Punishment for Offences, especially committed against the Laws and Constitutions of the Government.*

**M**agnus, Lord Almoner to the Emperor Julian, and a Person in great Favour with and Authority under him, did by his Command set fire to the stately and beautiful Church of the Beristians, who dwelt in the Metropolis of Phœnicia.

This Matter not long after, in the Reign of Jovian, came to be enquired into, and a Debate arose thereupon, Whether the Lord Almoner ought

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to

*The Execution of a Prince's unjust Command*  
to be punished for putting that Command in execution?

*Opinions.*

Some thought him to be Blameless, and so exempt from Punishment.

1. Because the Prince's Command was always wont to serve his Ministers for a sufficient Authority, and the Reason of their Actions; and that Obedience could not but be yielded unto him, who could do what he pleas'd in the Empire.

2. Because if Ministers of State were not allowed full Protection, it would be no easie thing for Princes to find any Ministers, since they could not be safe, if so be the Commands of former Princes were made void under their Successors, and they be compell'd to give an Account of their Actions, not according to the Command which they had received, which is often unjust, but according to Law and the Rules of Reason.

3. Because if the Commands of Princes, who act all, even when they command others, are unjust, the Fault ought to be imputed to them, and the Ministers not punished for their Offences; for where was the Justice of it, that any one should undergo the Punishment of another?

4. Because 'tis requisite that Successors should repeal the Acts of bad Princes, but to punish such as of necessity complied with their Authority, this is no other than to convert the Necessities of Times imposed upon them under evil and corrupt Princes, into Crimes and Punishments; that he does not seem to have acted any thing, who has done a thing out of inevitable Necessity, and that this is included in the Command of a Prince: He that acts of necessity, suffers rather than acts, says *Quintilian*.

*Others*

*Others in the mean time were of different Sentiments, and adjudged him worthy of Punishment.*

1. Because whatever is in it self and of its own nature unjust, can be maintained or confirmed at no time, by any Prince's Command, and under no Pretence whatsoever, for every thing remains to be the same it was in the beginning, and 'tis also just to punish Evil at any time.

2. Because this is the Resentment of and a most certain Practice amongst all Nations, in respect to those Princes and their Flatterers, who persuade and excite them to the perpetrating of all manner of Enormities; that their Acts and Decrees are annulled, and esteemed for naught after their Deaths, but that the Courtiers, Flatterers and chief Favourites of corrupt Princes, and the Executioners of their wicked Commands, be compell'd to answer for their past Actions to the succeeding Princes or Government.

3. The Prince's Command is no Excuse in this Matter, for as long as any one makes use of a Prince that is gracious and kind to him, but injurious to the Common-wealth, yet he is oblig'd so to use his Favour as not to prefer it and his Pleasure, before the Welfare of his Country, the Authority of the Laws, and his Duty to the Publick. We are not only to gratifie the Prince's Pleasure, but also to have a constant Regard to the Good of the Government.

4. We are not so much to believe that Princes are the Authors of evil and unjust Commands, as their Councillors, seeing Princes commonly pursue their Counsels; and that without their Ministry unjust things cannot be put in execution, and since



*The Execution of a Prince's unjust Command, &c.*

'tis the part of Ministers of State to give Princes such Counsels as are good and for the benefit of the Publick.

5. Because that as whatever any one acts by another, he seems to do it himself; so what unjust thing soever a Person does for his own Advantage and Favour of his Prince (tho' the same be commanded by him) is to be looked upon as if acted by himself.

6. If Princes themselves upon the abolishing of their Acts are punish'd, why should the Ministers of such Princes, be exempt from Faults and Punishments, especially seeing there is now no Command in force, whereby they may be protected, for all the Commands and Orders of an unjust Prince are now made of no effect.

*Resolution.*

In pursuance to the prevailing Authority of this Opinion, the Lord Almoner was cast, and compelled to rebuild the stately Church of the *Beristians* at his own Charge.

*Event.*

And the Almoner was oblig'd to obey the said Decree.

*The Author's Judgment.*

Seeing there is no Authority so great, as to be able to invert the Nature of Good and Evil, that Princes are not constituted for themselves but the Publick Good, and that therefore their Ministers ought to give them their Assistance for that end, and that unjust Princes are mortal and their Authority

thority fading, but the Government and Laws Eternal, no Command to do Evil can avert and free from Punishment; for tho' that gives a kind of an Authority under an unjust Prince and one then in Power, yet when he is removed or deprest, the Government or better Successors most justly call Offenders to an Account and take Revenge on them.

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C A S E II.

*Of a Just, Prudent and Seasonable Defection from an Unjust and Tyrannical Prince.*

**T**He *Portuguese*, a Nation bordering upon *Spain*, having for some Years, rather by Force of Arms than Right of Dominion, endured the Yoak of the *Spaniards*, and finding their Properties invaded and their Rights taken away both at home and abroad, more and more every Day after another; that their Tyranny also increased, their Nobility were neglected, and the Populacy oppressed by new Levies and Taxes, they not only began to think of, but to hold Consultations about a Revolt; and therefore the Question was put in a private Council held by the Nobles, Whether they had a just Cause to Revolt? and if so, Whether the same were useful and seasonable at that time for the *Portuguese*?

*Opinions.*

They almost all unanimously concurr'd, that they had a just Cause and were under a Necessity of Revolting.

### *A Revolt from a tyrannical Prince*

1. Because the King of *Spain* was looked upon to have no good Title to the Crown of *Portugal*; especially the better Right of the House of *Braganza* was postponed, and that the King of *Spain* was only happy in respect to the Success of his Arms therein.

2. Because, as he was not a rightful King, he had hitherto reigned unjustly, by oppressing the People in their Liberties whereon he had seized; and that therefore what would be a just Cause of a Revolt from a lawful Prince, must be much more just in reference to an unlawful one.

3. and lastly, Because the utmost Violence had been already offered to their Liberties by the iniquitous Dominion of the *Spaniards*.

And therefore they concluded they had a most just Cause for it, lest, as they saw already their Liberties in extreamest danger, they should be forced at length, when all hopes of redress were precluded, to endure the utmost Servitude.

But yet they could not so well agree, whether it were convenient for them to Revolt at that time or no.

*Those who did not think it seasonable, did at the Consult offer these Reasons to the others Consideration.*

1. That as the King of *Spain* was a potent Prince, so he was in a manner always in a readiness and armed, and that therefore it would be easie for him to nip their Revolt in the Bud, and prevent the farther progress thereof.

2. That it would be an easie thing for him and also requisite to withdraw his Troops from those barren Parts where he made War, and pour all his Force upon *Portugal*, as being better than all the rest, and



and in losing of which he must look upon his chiefest Acquisitions of Strength to be gone.

3. That the *Portuguese* had not a Power equal to the greatness of the Design; and for their Friends and Confederates, they were not at present in such a Condition as scarce to hope for any Relief or Assistance from them; for they were all of them either reduced to a low Ebb by expensive Wars, or sufficiently imploy'd in making their own Party good against the *Spaniards*.

4. That the *Catalins*, who were Subjects of the Crown of *Spain*, were at this Juncture in rebellion against it, and therefore it would be prudence in them, to consider and wait for the Event of their Undertakings and Defection, which, as it should prove successful or otherwise, might be a Guide to the *Portuguese* to go upon or defer their Revolt. That it would be also a prudential part in them to wait for the Events of the many Wars the King of *Spain* was at present engaged in, which as they proved prosperous or unprosperous to him, so was the Revolt of the *Portuguese* like to be unto themselves.

5. They urged them in a particular manner to consider and weigh this one thing; That the Estates, Fortunes and Effects of many of the *Portuguese* were at this time in *Spain*, which they must all lose, as soon as the Revolt, carried on by the Joynt Concurrence of the *Portuguese*, came to be known in *Spain*.

6. That there were a great many of their Nation, and some Peers among the rest, that lived at *Madrid* and elsewhere in that Country, who must expect nothing less than Imprisonment and other hardships, in case the *Portuguese* in such a Juncture of time revolted from the *Spaniards*.

7. They instanced in a matter long since known by experience; that tho' *Anthony* the Grand Prior, was proclaimed King of *Portugal*, when *Phillip* King of *Spain* insisted upon his having the Authority conferred upon him, yet that *Phillip* almost in forty days time expell the Grand Prior *Antonio*, and his whole Faction, and got the Crown of *Portugal*; and that therefore it behoved the *Portuguese* to remember it and be afraid to tread in the same Steps.

*Others on the contrary, and in order to subvert the specious Pretences and Arguments now offered, urged,*

1. That it was in vain for them to urge any Danger from the King's Armies, as they were dispers'd up and down in divers remote Countries; for wherever they were distributed they were never entire, neither did it appear to be an easie thing for him to recall his Troops from other Countries into *Spain*, for it was neither advisable for them to desert the *Netherlands* or lessen the number of their Troops there, seeing the *Dutch* and *French* put them daily hard to it; nor the *West-Indies*, where their Riches was and consequently their all; nor *Italy*, on which the *French* had continually a watchful Eye; nor *Germany*, the House of *Austria* being oppress'd by the Arms of some of the Members of the Empire and others. If the *Spanish* Arms proved successful, so much the more intolerable would the *Spaniards* Government be to the *Portuguese*, since the former would undoubtedly but grow more licentious and arrogant with their Success; but if otherwise it fell out with them, and that they lost ground; then the *Portuguese* might reckon upon undoubted success in their Revolt.

2. That

2. That it was to no purpose for them to pretend that their Friends and Confederates would not come into their Assistance; for this their Revolt from the *Spaniards* would be a matter of that Consequence, that they could not but look upon it as their own Cause, and that therefore they had no reason to despair of their Aid: To which they subjoined, that the *Spaniards* being taken up with making War against their Associates and Friends, was a real help to them.

3. It was a needless thing to wait for the Event of the Rebellion of the *Catalins*, and to urge that as an Argument for the *Portuguese* to delay their intended Revolt; for it was not so much their business to be Spectators of the defection of the *Catalins*, as by a like Revolt, to help and promote it; and that therefore either Nation pursuing the same Counsels, ought to advise and be a support to each other. And this was an affair which should the more immediately be considered by the *Portuguese*, that in case the *Catalins* were once reduced under subjection, it was very likely, the *Spaniards* would have a more watchfull Eye, and give severer usage to those People, from whom they might one time or other expect the like Revolt; and that *Portugal* was suspected of it by the *Spaniards*, was past all manner of doubt.

4. It signified nothing to urge the Estates and Fortunes of private Persons of their Nation in *Spain*; for particular Interests were to give way to the publick Good; and the most prudent as well as adapt Remedies were to be used, least the Revolt should prove detrimental to particular Persons; for seeing there were divers *Spaniards*, who had Estates in *Portugal*, they might well be seiz'd on, if the *Spaniards* in their Country medled with



*A Revolt from a tyrannical Prince*

with the Effects and Possessions belonging to the *Portuguese*.

5. As for what was said in relation to the many Peers and others of the *Portuguese* Nation dwelling in *Spain*, there were as many of that Nation at the same time in *Portugal*, who upon the breaking out of the Revolt, were to be used and secured in the same manner as the *Spaniards* dealt with the *Portuguese*.

6. That it was to no purpose now to rub up the remembrance of former Times and Losses: That the King of *Spain* in the time of the Grand Prior *Don Antonio* was ready prepared for the Expedition, and that the *Portuguese* at that time were full of Civil Dissentions, and relied upon the Aid of the *English*, but that no Foreigners would have such due Care and Regard for them as themselves. Lastly, That having met with some Overthrows in *Africa*, they were thereby debilitated and not a Match for the *Spaniards*.

7. But now all things were otherwise; and more especially they were to consider the Inclination, Desire and Consent of the whole Body of the People, who being naturally Enemies to the *Spaniards*, and still the more incensed against them for their Oppression and Cruelty, entertained a greater hatred of them; so that they should seem in this Revolt rather to wage a Foreign than a Civil War, since every body at home consented to the said Defection, and therefore would carry an Offensive War against *Spain* her self and the Fortresses belonging to it.

8. That *Spain* was now exhausted of Men by the Levies that had been made, and therefore was not in a Condition to withstand a sudden Irruption.

9. Their

9. Their Treasury, if ever, was certainly now at a very low ebb; for their yearly Returns from *India* were some times, and in great quantities, intercepted, and many of their Vessels at that time shut up in their Harbours and not daring to stir for fear of the *Dutch*.

10. That the Duke of *Braganza* was commanded to raise some Thousands of *Portuguese*, which he might make use of, and in the mean time frustrate the Hopes and Expectations conceived by the *Spaniards* from such a Reinforcement.

11. That the Affairs of *Spain* were at this time every where unsuccessful, which was manifest by the Event.

12. As the *Spaniards* held many Places in Subjection to them, by Force of Arms, and even some Kingdoms adjacent to *Spain*, those People, seeing the Ensigns of Liberty put up here, would imitate our Example and assert their Right.

13. That they had Treasure enough to defray the Charge for a long time.

14. That unless the *Portuguese* revolted in time, they should be dispossessed of all the Remains of what their Ancestors enjoy'd in the *Indies*; for as long as the Kings of *Spain* and *Portugal* accounted the *Hollanders* to be their Enemies, they advanced their Interests in those Parts to the loss of the *Portuguese*; Why therefore should not they rather choose to have the King of *Spain* to be their Enemy than their Prince or Friend, seeing they endured great Losses and Hostilities under his unhappy Government? And why should not they rather have the *Dutch* to be their Friends than Enemies, whose Wars, they found by Experience, proved happy to themselves, but quite otherwise to the *Portuguese*?

15. No

*A Revolt from a tyrannical Prince, &c.*

15. No such Infelicity could be thought of to attend a Revolt of this nature, but that the same might be endured with the loss of their Liberty; and in case they did not revolt, they must expect to endure greater Tryals.

16. Lastly, That they had already held a Consultation about Revolting, and therefore ought to attempt it; for they that deliberate, revolt; and in such Cases it is more dangerous to design the thing than to dare to attempt it.

*Resolution.*

The *Portuguese* for these Reasons revolted from the *Spaniards*.

*Event.*

They proved very successful therein, and retain their Kingdom under a distinct Head to this Day.

*Judgment.*

The Cause of a Revolt is very just, when the Liberty of a Country, by the unjust Government of others, is reduced to utmost danger; and a Revolt is most seasonable of all, when, after having duly weigh'd all things, the Times are indeed most intollerable to those who would revolt for their Liberty, and yet no Time so proper as the present Opportunity.

*How*



C A S E III.

*How are Rebellions but reduced Subjects to be dealt with.*

**T**He *Latins* being overthrown by the *Romans*, under the Conduct of *Aulus Posthumius* the Dictator, near the Lake *Regillus* in *Italy*, their Embassadors came in a suppliant manner to beg the Favour of the *Romans* to their Nation, who being introduced into the Senate, laid the Fault of the War upon the Nobles, and that the Common People had only offended, in obeying their Generals; and withal added, that they were compelled thereunto by Force. Besides, they humbly alledged, that they had been sufficiently punished already, by the loss of all their Youth in the War. It was therefore debated in the Senate, What they should do with the rebellious *Latins*, and how they ought to proceed against them?

*Opinions.*

The Senators were divided in their Opinions upon this occasion; and,

1. *Titus Largius* thought, that the victorious *Romans* ought to use their good Fortune with moderation, and that the most desirable Chances of Fortune were to be attempered with Piety and Humanity; If they should be rough with the *Latins*, and throw them into utmost despair, they might perhaps become stronger and more furious than ever: That he must be estrang'd from all manner of Friendship, who appears implacable unto all People,

People: They were to think, that the *Latins* had rebelled as being unaccustomed to Subjection, and used to Liberty; but if the *Romans*, as being now Conquerors, would totally despoil them of it, the Thoughts of the *Latins* would be rendred thereby much more intent upon and desirous of recovering their Liberty than ever; and therefore that the Seeds of Rebellion could not be taken away by Methods of Severity and despoiling Men of their Liberty, but new Occasions administred thereby; wherefore their best way was to forget all former Injuries, and to renew their ancient Alliance with the *Latins*.

*Servius Sulpitius*, a Roman Senator, was of another Opinion, and alledged, that seeing the *Latins* had already frequently rebelled against the *Romans*, it was advisable for them to dispossess them of half their Land; that the Citizens of Rome would by this means become seiz'd of half the Country of the *Latins*, and so serve as it were instead of Keepers and Garrisons to the *Latins*, lest they should design or enterprize any thing for the future against the Dominion of the *Romans*.

*Cassius* was of opinion their fortified Cities ought to be rased, and that they should punish the Great ones and Ring-leaders of the Faction, but that the ignorant Multitude should be sold for Slaves; for otherwise they would never be quiet, neither would the *Latins* have rebelled so often had not they relied upon the Clemency of the *Romans*.

To this he cited an Example from their Ancestors, that they had no other reason for the raising of *Alba* (from whence they themselves and all the *Latins* were descended) in one Day, than that the *Albans* had made use of their first Pardon for the forming of new Conspiracies, making the same as it were the Instrument and Firebrand of a new Sedition.

*Resol.*

*Resolution.*

The Dictator *Posthumius*, having heard and weighed the various Opinions suggested to him, made choice of the more gentle Sentiments of *T. Largius*, and made a Decree in conformity thereunto.

*Event.*

They came to know by Experience and in Process of Time, that they ought to have taken a severer Course with the *Latins*; for they, being thus used gently, according to the Dictator's Decree, rebelled again and again against the *Romans*, while the Instruments of Rebellion remained amongst them.

*Judgment.*

What may be learnt from this Case and the Event thereof is this; That so much and such things are to be left by the Favour of the Conquerors to a rebellious and conquered People, for the sake of which they ought to love the Conquerors, and whereby they are not in a capacity to injure their Masters; but that those things, upon the gaining of a Victory, are to be taken from them, by which, if they cannot love their Conquerors, they shall not be able to hurt them.

*Whe.*



## C A S E IV.

*Whether it be not better for a Government to accept of Satisfaction for its Pretensions upon others, and to remit them, or not to do it, but still continue the same upon them?*

**T**HE Directors of the *Dutch East-India-Company*, being in the beginning of their Expeditions to and Settlements in those Parts opposed by the *English*, who were then powerful in the *Indies*, and who made it their Business to prevent their Successes and obviate their Endeavours; they seized upon some of the *English* and punished them most severely, putting several of them to death as Traytors, and dispossessed the rest of the Country they had settled themselves in, viz. *Amboyna*, the Story whereof is very notorious. Hereupon *James I.* King of *England*, and after him *Charles I.* highly resenting the Fact, thence-forward failed not to attack the Company's Ships, either in the open Sea, or by way of reprisal, to detain and arrest them in their Harbours; which, when the Directors of the said Company found to be grievous and detrimental to them, they sent by their Embassadors to the King of *England*, and made him a Tender of a large Sum of Mony, for an Abolition of all past Pretensions, and that the *Dutch* might peaceably as before continue their *East-India* Trade and Navigation. Wherefore the Matter came to be debated in the King's Council, Whether it were expedient and for the benefit of the Kingdom of *England*, for a single Sum of Mony, to desist from and renounce all the Pretensions they had upon the *Dutch* Nation.

*Opi.*

*Opinions*

Some there were indeed who were for postponing all other Considerations, and thought it advisable to accept of the Offer made unto them, saying,

1. That the Sum which was offered was great, and such an one, that in case the King of *England* at any time did Set upon or Arrest the *Dutch* Ships, he could not easily, and that not before the expiration of many Years, and the hazard of many Sea-fights or Rencounters, be able to extort or get so much from them.

2. That the *Dutch* themselves grew more potent Day by Day, by the increase of their Trade and Territories; and the more powerful they grew, the less Money they would afterwards offer, and be able to defend themselves the more easily against the Invasions of the *English*; and therefore that they were not now to reject the larger Sum that was tendered them from a weak State, which when it grew stronger would not offer them so much.

3. That they could not presently and impunedly set upon their Ships, by reason of the Peace made with the *Dutch* States; neither could they be arrested or detained any where but in the *English* Ports; but they rarely and at no other time than when forced in by a Storm, put into their Ports, and that therefore they seldom had an Opportunity to extort any thing from them; and so, seeing there was so much now offered at once, they ought to be satisfied with it.

Others were of contrary Sentiments, and argued after this manner against taking the Money:

1. That to suffer the King's Honour and Prerogative to be injured in his Subjects, by pretending  
to

18 *The Pretensions one Government has upon another,*

to make a Compensation with a Sum of Mony, would bring Majesty into contempt, seeing there was no Proportion between the Offence and the Sum of Mony, tho' very large, that was offered by way of satisfaction for it.

2. Supposing the *Dutch* grew never so strong, yet they could not in time of need, which seldom misfed, but put into the *English* Ports; and in this Case the most potent even stand in need of the Conveniencies belonging to those who are much inferior to them.

3. That indeed they had hitherto met with but few Opportunities of seizing the *Dutch* Ships in their Harbours, but they might have them oftner for the future; and that the Accidents and Injuries of the Winds and Seas were eternal; Wherefore it was not convenient they should be parted with for one Sum of Mony.

4. That the *Dutch* themselves would upon this Occasion leave their usual Passage to *Holland*, between *England* and *France*, thro' our Channel, and for fear lest they should be the more easily attacked by the *English*, take a larger Compass, and sail thro' the wide Northern Ocean, round about *Ireland*, for their own Country. By how much the longer that Voyage is, by so much the more chargeable it must be, for as much also as that part of that Northern Ocean is more liable to Storms and bad Weather; that indeed they hitherto sailed with good Success enough, but if once they should happen to lose Ships and Goods, what reason was there to doubt but that they would offer much more.

5. It was much greater in a Government to keep up its Pretensions than to part with them, that the injured Person and Pretender can always require and demand something; he that suffers satisfaction



*not to be relinquished.*

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faction to be made him, he receives a thing all at once, and in the mean time, upon the presenting afterwards of much better Opportunities, loses all.

*Resolution.*

Most of the Councillors agreed to the last Opinion, and so the King rejecting the Mony which they offered him, reserved the Matter of his Pretensions inviolable.

*Event.*

It appear'd for a long time, that the King took the best Counsel, but the unhappy Civil War that ensued in *England*, and Changes in Government, occasioned such a Vicissitude in Things, that perhaps the Mony might have been as well taken and the King demit in his Pretentions.

*Judgment.*

Publick Pretentions ought not easily to be sold or parted with, especially where there are continual Opportunities of pretending to and requiring of the thing pretended unto: He that thus pretends, can always do something; To accept of satisfaction in this Case, is to transfer away all manner of Right and Opportunity; but, on the other hand, the Matter is otherwise with a Government, when upon rejection of a present Offer, there is no Opportunity to be met with for the future for demanding and prosecuting its Right.

C 2

Of

## C A S E V.

*Of a Prince making War upon his Neighbour, upon some Pretensions of Right, tho' no new Provocations.*

**W**Hen *Henry* the Eighth came to the Crown of *England*, he was much solicited by the then Pope, who was at very ill Terms with *France*, to make War against *Lewis* the Twelfth, in order to recover his Right in that Kingdom; neither was *Ferdinand* of *Spain*, his Friend and Ally, backward to enter into a League with the King for that purpose, which brought the Business at length to be seriously debated in Council, where some argued stiffly for the War, alledging,

*Opinions.*

1. That a fairer Opportunity was never offered, Whether the King desired to maintain the Pope's Authority, or recover his own Right in *France*; that either of these were just Considerations, but both together not to be pretermitted.

2. That, to further the Design, he should not only have the Assistance and Blessing of his Holiness, but of his Father-in-law also; besides that it was possible the Emperor *Maximilian* might joyn therein, however he and *Lewis* the Twelfth had of late concurred in their Designs.

3. That it was probable his Subjects in *France* retained still a due Remembrance not only of their Allegiance but of the Benefit received from the Crown of *England*; and for *France* it self, there  
never

never wanted discontented Persons, who would joyn him with their Forces.

4. That for his Coffers they were not so full in any King's Reign; to which also he need not doubt but a large Supply would be added by Parliament, who never failed to concur with their helping hand, when ever there was War intended against that Country.

5. As for the Difficulties of the Enterprize, they were not considerable, *Lewis* the Twelfth being not only deeply engaged in a War in *Italy*, but had lost his best Men there, so that he might be oppressed before he could set his Affairs in order at home; or if he should leave his Pretensions in *Italy*, to look to his own Country, that would yet free the Pope from the Danger he was in, and consequently give the King the Honour of performing his Intentions.

These Arguments were opposed by others, after they had well weighed the Matter, who said,

1. That indeed the King's Title to *France*, especially to the Hereditary Provinces, was undoubted, the Opportunity fair, and many Circumstances besides conducing to farther that great Affair: But all these were not sufficient Motives for them to make War against so potent a Neighbour, unless there were more than a possibility of effecting their Purposes.

2. They might consider this by comparing these Times with the former, and if when all *Guyenne*, *Anjou*, *Tourain*, and *Normandy* was ours for a long time, and had besides the Duke of *Bretaigne* for our Friend, and the House of *Burgundy* an assured Ally and Confederate, we could not advance our Designs in that Country, what hope was there now of attaining them? Were we stronger now than at any time? or could we promise our selves better success?



*War made against a Neighbour*

3. Tho' it should be allowed, that the many Battels we had fought against the *French*, had been almost as many Victories, what was *England* the better for them? Who could say he had made his Fortune by it? Had we ever a more glorious Time than that of *Edward* the Third, and yet was the Country ever more poor and weary of the Wars? the Treasure of the Kingdom being not only much exhausted, but even the People themselves glutted with their Prosperity, and were we now to expect better Days?

4. Allowing that with our 12000 or 15000 Men we had often defeated their Armies of 50000 or 60000, was it consistent with Reason that we must still expect the like success? especially since the use of Arms was changed; and for the Bow, proper for our strong Men, the Musket began to be generally received, which, besides that it was a more chargeable Weapon, required a longer Practice, and might be managed by the weaker sort.

5. Again, The natural Scituation of Islands seemed not to suit with Conquests in that kind; *England* alone was a just Empire; or, if we would enlarge our Bounds, it should be the way we could, to which it seemed the Eternal Providence had destined us, which was by Sea: the *Indies* were discovered and vast Treasures brought daily from thence, we should therefore look that way; and if the *Spaniards* or *Portuguese* would not suffer us to join with them, yet there would be room enough for all of us.

6. Neither herein would a Piety equal to that of succouring Pope *Julius* II. be wanting, since by converting those Infidels to Christianity, there would be a larger Field opened for doing good, than by establishing a doubtful and controverted Head of the Church; the Council of *Pisa* having determined

mined both to depose him and substitute another in his place.

*Resolution.*

The King rejected the last Arguments, and the rather because of the hope he had to engage the Emperor *Maximilian* on his side, and to have the Title of *Christianissimus* taken away from the French King by the Pope, and transferred upon himself; and so actually engaged in a War against France.

*Event.*

In this War he took *Therouene* and *Turnay* from the French, but finding *Ferdinand* at last unsincere in his Engagements, was induced to make a Peace with the French, his Sister, the Princess *Mary*, being taken to Wife by *Lewis* the Twelfth, for the firmer tying of a Knot of Friendship between them.

*Judgment.*

The rousing up of dormant Pretensions of Right is rarely attended with the desired Success, I mean, the full obtaining of what is laid claim to by Princes upon such Occasions; however, there is many times a necessity of making such Claims, that one's Right may not be forgot, and the seeking of it, as opportunity requires, appear the more justifiable: But after all, when Countries or Cities that have been unjustly possessed by Arms and surprize, have been conceded to the new Possessor by Solemn Treaties, it will be hard to break thro' them without incurring the Censure of Breach of Faith.

## C A S E VI.

*Of Truces to be made or not with an Enemy.*

**A**Bout the beginning of the last Century, in the very heat of the War, between the *Spaniards* and the *Dutch*, the former offered to make a Truce with the other, the *Dutch* having been hitherto more successful in their Arms than their Enemies; now a Debate arose in the States, whether it were for the good of the Republick to accept of the Terms offered them in respect to a Truce at that time.

*Opinions.*

The Debate was various and hot, for there were some of Opinion they ought to entertain no manner of thought or have any Consultation about a Truce under their Circumstances.

1. Because they had encouragement to carry on the War, and fortune had hitherto favoured their Arms; and to pretend now to interrupt the Course of their Success by a Truce, upon the Expiration of which they were to expect and actually to engage in a War again, was no other than to forsake themselves, and to chose rather to bear still the Charges of the War, than reap the Fruit of it.

2. Because they seemed by agreeing to a Truce, to allow the Enemy a breathing time, whereby they might gather Strength and renew their Courage again; which would be such a piece of kindness they'd them, that would be injurious to none so much.



much as those that agreed to the Truce, and who would quickly be attacked with a greater Force for it.

3. Whereas now some private Persons at their own Charge, had it under serious Consideration to make an expedition into the *West-Indies*, which was likely to redound much to the Honour and special Advantage of the *Dutch Nation*, and to prove very detrimental to the *Spaniards*, a Truce would make them lay down their Arms, and so pall and delay the Undertaking; which Opportunity, if neglected by a Truce, (whereby in the mean time those Territories, as being now very ill secured, might easily be Invaded) might give the *Spaniards* leisure to provide for their future Defence, and there was no doubt but they would come to know the Design of the *Dutch* upon them.

4. Because there was scarce any trusting of the Enemy, in the very Truce they made with them, who as they looked upon the *Dutch* to be no other than Rebels, would not, if they found an Opportunity, think themselves bound to observe the Articles and Conditions they had agreed to, but assume their wonted Authority over them. And therefore they would find themselves under a Necessity in the time of the Truce, to keep up good Garrisons and many Soldiers in Arms, to prevent any sudden and perfidious assault of the Enemy; seeing therefore the Charges they should be at, during the Truce, would in a manner be equal to that of the War, therefore the latter wherein they had hitherto been prosperous, was rather to be pursued than the other, which by the benefit of a Truce would prove of greater advantage to the Enemy than to themselves.

5. If

5. If they admitted of a Truce their old Soldiers would sink, and be drawn away to other Countries, whereby the Republick upon the Expiration of the Truce would be debilitated, and for want of their Assistance become too weak for the Enemy.

6. They had also much reason to be wary, and affraid of the *Spaniards* privy designs in suing for a Truce, since they might intend hereby to assault the *Dutch* thro' the sides of others; for whereas the Affairs of *Germany* were now in confusion, and the Liberty of it, in danger from the Imperial Arms, the *Spaniards* might transfer their Arms into that Country, to assist the Emperor, and subdue the Protestant Princes there, and so give the *Dutch* just cause to fear being damnified that way. Besides, as a Truce would be the cause of an intercourse of Conversation and Trade; the *Spaniards* would endeavour by their Emissaries and Clandestine Counsels, to sow Seeds of discord between them, either upon the account of Religion or otherwise, and so disturb the Peace and domestick Tranquillity of the Republick.

7. That the *Spaniards* had Wars to manage in other Parts, and therefore had an Opportunity to keep their Soldiery under the exact Discipline of War, while the *Dutch*, in case they made a Truce with the *Spaniards*, had no Wars to engage in, and so their Men must grow Sluggish, and unfit for Arms; and therefore they were of Opinion that a War, which had hitherto been prosperous to them, was far more eligible than the Truce proposed.

Others on the Contrary entertained different Sentiments, and opposed these Arguments; urging,

1. That the Terms offered them, ought not to be rejected, especially seeing they were such, which, if not embraced by them, who sustained the

the War, would make that War, how just soever the cause of it might be thought to be, to appear unjust; for the *Dutch* being once affected with the sweetness of a Truce and, as I may say, tasted of Peace, would after the Expiration of the Truce, be easily brought to agree to a Peace.

2. That their Treasure was exhausted with the Charges of the Wars, for the increasing of which, the Tranquillity, which a Truce would bring it, was the only Remedy.

3. That the Victories they had hitherto gained had tended rather to the Ruine than benefit of the Common-wealth; seeing the Cities they had subdued with so much Danger and Charge, and defended with so many Garrisons, ought to be retained still in their Obedience; so that the benefit accruing from them, was in a manner nothing comparatively in respect to the Charge which the Common-wealth was forced to be at upon that Account.

4. Neither was it to be imagined that a prosperity of Fortune was to attend the *Dutch* for ever; and therefore in the times of Prosperity, Adversity was to be thought off, which in case it came upon them, the very Truce that was now offered, but rejected by them, would be tendered then by the *Dutch* themselves, and what detriment that would be to them, might very well be imagined by all confederate Persons, seeing it must fare worse with those who make a tender of it, than with them, to whom the same is offered.

But there was a mighty Dispute even amongst those who were for the Truce, whether the same were best for a long or short time for the Common-wealth? some looked upon a short Truce to be nothing, and an invention as it were to befriend the Enemy, and so the Favourers thereof were traduced as the Instruments of Military



*Truces when seasonable.*

tary Sloth; others in the mean while looked upon a long Truce to be attended with the greatest Disadvantage and Danger, because the Soldiers and such as were well versed in Military Affairs would in that time dwindle and be lost.

*Resolution.*

After many Altercations on both sides, they at last agreed to a Truce of twelve Years.

*Event.*

It was found by Experience, that the said Counsel and Resolution was injurious to the Commonwealth; for seeing that in the mean time the *Spaniards* had the Artifice to raise Disputes and Controversies in matters of Religion, and so make the Subjects of the States to divide into Factions, the cause of so much Evil may be justly referred to the Truce above-mentioned: Was not the *Elector Palatine* and other Princes of *Germany*, in the mean time, chiefly overthrown or dispossessed by the *Spanish* Arms; and this became a detriment to the Commonwealth: To this we may subjoin, that the *Spaniards* after the Expiration of the Truce carried on the War against the *Dutch* with much more sharpness than before, and that the glory and benefit that were to arise from the *Indian* Expedition, already mentioned, was deferred for so long a time.

*Judgment.*

He that upon such an occasion and under the like Circumstances of things intends to enter into a pacification with an Enemy, ought in the first Place

Place to consider both himself and the Enemy; himself, that he may know how much he differs from himself; and the Enemy, so as to understand how much he is able to perform and accomplish in the interim of time. All those Truces are not safe, after which a fiercer War is renewed, since nothing but War is studied thereby; and those Truces are unseasonable to such Nations who having been hitherto successful in their Arms, put a stop to the Current of their Prosperities by engaging in them.

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C A S E VII.

*After what manner in making Leagues with foreign or neighbouring Princes, Cities or Republicks, special Provision is to be made, not only that the Articles be strictly observed on both sides, but that this should be one of them, viz. That as long as the Cause endures, whereon the League is founded, so long the League it self is to endure.*

**T**He Archbishops and Princes of *Treves*, being formerly contented with a limited Power, grew at last ambitious, and began daily more and more to invade the Rights and usurp the Priviledges of the People, in conformity to the Examples of the Bishops of *Cologne* and others in *Germany*, who by enlarging their own Authority, continually lessen'd the Priviledges of the Cities under their Jurisdiction.

The People of *Treves* taking that ill and daily fearing things would grow worse with them, unless

less they did prevent them in time, and, being unable of themselves to stand up for the defence of their Liberty, in opposition to their Princes that invaded them, they resolved to implore the assistance of others, and to secure themselves by making a League with them: Among other things, in the Year 1376. they debated about putting their City under the Protection of the Duke of *Lorain* upon certain Terms, and the Question was in their Assembly, Whether they had just reason to chuse him, and what those Conditions should be upon which they ought to admit him?

### *Opinions.*

Some were for the Duke of *Lorain* only before any other, because he was a Prince of considerable Power, and both in *Germany* and the Neighbourhood of *Treves* was posselt of divers strong Cities and Fortresses, which it was the Interest of the People of *Treves* to have to be their Friends only, and by the assistance of which they might most conveniently defend themselves against any Enemy.

Others upon this occasion were against the Duke of *Lorain*, saying, That what was urged concerning the Duke's Power, his Fortresses and the Benefit of them, was true; but in the mean while, in case those Fortresses, thro' the Duke's neglect, were taken by the Enemy, or mortgaged or sold by the Duke to some body else, or any other way put out of his Power, the People of *Treves* would lye under the burden and necessity of observing the League, and yet have no benefit by it, seeing the Duke of *Lorain's* Fortresses were the principal Grounds upon which they went in making a League with him.

*Resol.*



*Resolution.*

Notwithstanding the many Difficulties that were obtruded in opposition to the former Advice, yet the same prevailed, and there was a League made between *John Duke of Lorain* and his Heirs, and the Citizens of *Treves*, that he should take both them, their Families and Fortunes under his Protection and Care; so that if any one committed Hostilities against them, he should presently give them Aid and so forth against them: In consideration of which the Citizens of *Treves* were to pay him all due Acknowledgments, and, over and above that, an yearly Pension, as their Protector.

*Event.*

The Citizens of *Treves* found no good Event from this League, not that the Arguments to induce them to enter into it were despicable, but because the Articles were not well considered, and unwarily agreed to; for no long time after, some of the Fortresses of *Lorain*, for want of sufficient Garrisons, were taken by the Enemy, and others mortgaged and sold to other Persons, who were not bound to aid and assist the People of *Treves* against their Enemies, while they in the mean time were bound to pay their annual Acknowledgment to the Duke of *Lorain* for his Protection, and yet received no Benefit from the League, which could only be expected from the said Fortresses which he should have maintained and kept in his own Power.

*Judgment.*

Wherefore the Citizens acted imprudently, and were not wary enough in drawing the Articles of  
the

the said League: As their entring into a League with the Duke of *Lorain* was necessary, so they found afterwards by Experience and the Judgment of wise Men, that they ought to have stipulated, that the Cause of the League should have lasted as long as it, by adding these or some such Articles thereunto.

1. That the Duke of *Lorain* should not be at liberty to alienate, sell nor mortgage his Castles and Fortresses to any other during the League.

2. That he should be oblig'd to keep sufficient Garrisons in his Fortresses for the defence of them against the Enemy; otherwise that it should be free for the People of *Treves* to possess themselves of and defend them with their own Troops.

3. That if things were done otherwise, as the Cause, for which the League was entred into, was taken away, so there should be no more League between them, but the same looked upon void and of none effect.

Those therefore who are about to enter into a League with another for the Publick Good, ought always to consider, what the Principal Cause was that induced to make such a League, which whenever it came to cease, whereby the League would rather put the Allies under servitude, than be of any benefit to them, the Principal Article of all Leagues should be, That the Cause of observing the League should never be separate from the observance of it: For the Cause many times ceases in other things, when the Effect exists; but in the point of a League, the thing is, that as long as any thing is done according to the Tenor of it (and that is done as long as the League lasts) the Cause also is to be supposed to last just as long and no farther.

C A S E VIII.

*Whether a Prince ought to leave his own Dominions and head his Army in a foreign Country in Person, and upon what Grounds the same is advisable to be done?*

**H**Enry the Eighth of *England*, having towards the beginning of his Reign resolved upon a War against *France*, with the Advice of his Council, in order to recover his ancient Rights in that Kingdom; It was controverted, that considering the Expedition was a Matter of very great Importance, Whether it was proper the King should go over in Person or leave the same to the Management of his Generals?

*Opinions.*

They who were against his going, urged, besides their due Affection to and Tenderness over his Person,

1. That in case the King should die without Issue, tho' the Succession were undoubted in his Sister *Margaret*, yet the People had such an Affection for the House of *York*, that they might take *Edmund de la Pole* out of the Tower and set him upon the Throne.

2. That the War in *France* was not of that consequence, (especially since, with the Death of *Julius* the Second, the chief Cause of Dissention seem'd to cease) that the King should go in Person, and leave his own Kingdom.

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But



*A Prince leaving his Dominions, &c.*

But it was alledg'd on the other side,

1. That to commit an Army, wherein the Flower of his Nobility and Kingdom was, to any one Subject, was not only unsafe, but to the prejudice of many worthy Competitors for that Post of Honour.

2. That it was no new thing (whether they regarded the ancient Kings of *England*, or the modern Emperor, and two *French* Kings successively) to go in Person with a Royal Army into a Foreign Country.

3. That the same Providence governed every where.

But it was replied by the other Party,

That until the King had more Issue, and that Male, it was against all reason of State to hazard the Kingdom to those Tumults which might ensue.

*Resolution.*

The King, somewhat distracted between the two Opinions, resolved at length, that it was agreeable to his Honour to head his Army in Person, especially seeing he had assurance that the Emperor *Maximilian* would not only meet him with his Troops but take Pay under him.

*Event.*

The King received no hurt in the Expedition, advanced his Glory very much by taking *The-rouene*, *Tournay*, and other Actions, and, at last, by making a Peace with the *French* King, who sued for it, upon advantagious Conditions.

*Judgment.*

Things succeed much better many times under a prudent General, than a Prince in Person, and there are

are various instances of it in the World ; but then he must be such a Prince, as wants Experience, or Courage ; or is rash and will not be advised : But where a Prince is a great Captain himself, every thing must needs thrive better under his direction and command, than the prudentest General in the World ; and tho' very much may be attributed to a wise Council at home, in directing the Affairs of the Field, and otherwise, yet I can never believe any Prince in the World will have the fortune of *Cæsar* or *Alexander*, I mean, attain to a kind of an universal Monarchy, as they did, without he be brave in his Person, heads his Armies himself, and acts as they did ; however there are some Circumstances of time that do require a Prince's presence more at the head of a Council Board, than an Army ; and the love of the Subjects, which a Prince should never be wanting to court and obtain, is now and then better attained by the one than the other.

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C A S E IX.

*Of the Marriage of a Prince.*

**L** *Etwis* the XIII. of *France* having one only Sister then to be Married, she was sought for in Marriage by *Charles* the I. King of *England*, who had just made a Peace with the *French*, when but a little before he had waged War against them, by taking the part of the *Rochellers* : Wherefore it was debated in the *French* King's Council ; whether his Sister should be given in Marriage to his *Brittanick* Majesty, or that it were better for them to bestow her upon some other Prince more to the Advantage of *France*.

## Opinions.

Some were against her being given in Marriage to the King of *England*, because there could but little or no Advantage accrue to the *French* Nation and Publick thereby ; for in case any benefit should arise therefrom, the same would be that the King of *England* would more strictly observe the Articles of Peace newly made between them, being not only engaged thereunto by the League he had made, but also Bonds of Matrimony: But now they were to consider, that the King of *England* without the intervention of such a Marriage, would either keep or not keep the Peace ; If he should observe the same, why should the King's Sister be married for that purpose, but in case he did not observe it, his Displeasure and Ambition to extend his Power, could not easily be restrained by the Marriage, for Prince's had no regard to affinity of Blood and acts of Duty in point of Matrimony, but to the publick Good ; that Prince's were very fond of their Wives in their Apartments, but out of them had little or no regard unto them, when they were to mind the Affairs of the Government ; that Persons had been found to be both Kindred and Enemies at the same time, *Cesar* and *Pompey*, being Father and Son-in-law, and yet they were not for that reason less vigorous in the Prosecution of a War against one another. Wherefore their Opinion was that they should bend their Thoughts some other way, and marry the King's Sister to some Prince, whose Dominions were near and of more use to *France*, and whereby perhaps in time they might be united to their Crown ; and more especially think upon *Lorraine*, which Country was next Neighbour

to



to *France* and for many Ages troubleſom to it; that there were but few of that Princely Family remaining, and therefore the Defections and Wars that had been on Foot for many Ages, might be finally determind by the League of Matrimony, there being apparent hopes, that the *Dutchy* of *Lorrain* might by this means be at length united to the Crown of *France*.

Others on the contrary argued againſt the foreſaid Sentiments, ſaying, it was highly conducive to the ſafety of *France*, that the Infanta ſhould become Queen of *England*, if not for any other reaſon, yet at leaſt for this, that the King of *Spain* had his Eye upon that Crown, who if he were not prevented therein, would out of the innate deſire he had to rule, and the Artifices whereby thro' the ſides of ſome he invaded others, be excited to do *France* all the miſchief he could from the Neighbouring Kingdom of *England*. That this was the deſign of the *Spaniards*, was manifeſt from the Marriage of *Philip* with Queen *Mary* of *England*, who, if ſhe had not proved barren, the Poſterity of the *Spaniards* had at this Day been poſſeſſed of the Dominion of *Britain*; and in the mean time, the *Spaniſh* Deſigns appear'd to be certain and fixed.

*Resolution.*

This laſt Opinion was aſſented to, and the Infanta of *France* given in Marriage to the King of *England*.

*Event.*

Matters ſucceeded accordingly, for the hopes of the *Spaniards* were at leaſt precluded and cut

*Of the Marriage of a Princess.*

off hereby, and the *English* making no attempts against the *French*, gave the latter an Opportunity to carry their Arms with success another way.

*Judgment.*

When upon a Debate concerning matters of weight and publick Concern, regard is had to what is of most benefit and advantage, those Counsels are always to have the preference, whereby any great good is not so much for the present to be obtained, as large damages prevented; without preventing of which, the benefits are to be sought for in vain, and all the Advantages expected from the contrary Counsels precluded: That Person is of great use to the Common-wealth, who takes care that they shall have no power to do mischief, who are believed to be bent upon it; and if this be not done, all hopes of the good Success of Counsels fall to the Ground.

C A S E X.

*Another Subject not much different from the last.*

**L**ewis XII. King of *France*, had but one only Daughter, named *Claudia*, who, according to the Salick Law, or Fundamental Constitution of the Crown of *France*, could not, upon the account of her Sex, inherit her Father's Dominions; In the mean time the said *Lewis* had a Kinsman, being the Son of his first Cousin, entituled *Francis* Duke of *Angolessme*, who, for want of Issue Male, was to be the undoubted Successor of King *Lewis*: *Claudia* in the interim, being a Minor, was by her Father's

Father's consent betrothed to *Charles* Duke of *Luxemburg*, eldest Son to the King of *Castile*: Now a Debate arose in the King's Council, Whether the Contract made with the Duke of *Luxemburg* was to be disannull'd? As also, Whether it were not more to the Benefit of the Kingdom of *France*, that *Claudia* were married to *Francis* Duke of *Angolesme*, whereby he became the King's Son as well as Heir to his Dominions?

*Opinions.*

King *Lewis* took that to be a Matter of great Moment, and especially he was of the opinion, that it was not consistent with the Faith and Majesty of a King, to break his Word and Contract made with the King of *Castile*'s eldest Son; and therefore it was an obstruction to him, so as that he could not comply with the Desires of the Peers of the Realm and his Subjects, who clearly foresaw the great Benefits that might arise to the Kingdom of *France* from the Princess's marrying with the Duke of *Angolesme*; for most of the Peers and Subjects of *France* were of that opinion; because they foresaw, that upon her Father's Death, there would devolve unto the Daughter *Claudia* divers Territories in *Italy*, *France* and the *Low-Countries*, and several Jurisdictions by right of Succession; all which, if by her Marriage transferred into another Family, must necessarily redound to the King and Kingdom's loss and danger: For that would be no other than to consign into the Hands of the natural Enemies of *France*, the *Castilians*, the Keys of the Kingdom, for the retaining, improving or recovering of which from the *Castilians*, grievous and long Wars must be sustained by the King's Successor, the Duke of *Angolesme*: Neither indeed



*Of the Marriage of a Princess.*

was it to be believed, or ought at least easily to be believed in Publick Councils, that the Marriage of *Claudia* with the Duke of *Luxemburg* would be a Means to secure stricter Bonds of Love and Friendship between the *Castilians* and *French*; for there was nothing among Princes so injurious to the Ties of Friendship as ambition in most of them to govern, and an endeavour to enlarge their Dominions; from whence the greatest Enmities have continually sprung between the most friendly and greatest Princes: And therefore their Opinion was, That in order to prevent all the hereditary Estate of *Claudia* and the Advantages annex thereby to the Kingdom of *France*, from devolving upon the Royal Family of *Castile*, and so easily open a Way from the neighbouring Provinces to the inland Fortresses of the Kingdom, the said Contract ought not only plausibly but really and in point of Right to be disannull'd and made of none effect: For which Point of Right, they offered two very weighty Reasons.

For first they looked upon it to be more agreeable to the Conscience and Honour of the King's Majesty, if out of due regard to the Safety and Security of his Kingdom, he disannull'd a Matter he had unadvisedly agreed to, or else gone upon before, out of a prudential Consideration, according to the Necessity of the Times, and so satisfy the Desire of all his Subjects, rather than out of an over-strict Observance of his Faith towards Strangers, suffer the Common-wealth to run the risque of an unavoidable Detriment; for Princes were bound by the greatest Faith and Obligation imaginable to the Common-wealth.

2. They added farther, That the Marriage of the Princess, as being ignorant of the thing and a Minor, did not amount to a Covenant-Engagement;

ment; ſince Marriage, above all other Contracts whatever, requires ſo free a Conſent, as not to be confined to any Promiſes or Conditions, both the Canon and Civil Law forbidding the ſame; to which may farther be ſubjoyned, That no Matrimonial Obligations had yet paſſed between the Princeſs and Duke of *Luxemburg*.

*Resolution.*

The King, being moved with the ſaid Reaſons and the Care of the Common-wealth, diſannull'd any Contract made with the Duke of *Luxemburg*; and for the Conſervation of the Publick Peace, gave the Princeſs *Claudia* in Marriage to the Duke of *Angoleſme*.

*Event.*

Experience has made it appear, that the Deſigns of the *Caſtilians*, ſo oppoſite to thoſe of *France*, were fruſtrated by this Marriage, and that *Francis* had Peace with his Neighbours, ſince by the Marriage of the Princeſs *Claudia*, all the bordering Countries came under his Dominion.

*Judgment.*

There are two things chiefly to be conſidered in the Marriages projected between the Children of a Kingdom with Foreign Kings and Princes. 1. How much by the ſaid Marriage paſſes to him, or by him to the Perſon with whom the Match is made. 2. What Good or Evil may be expected from Foreigners, who by the means of Marriages transfer the Royal Progeny of any Nation, who are the Pledges as well as Instruments of Empire, in other and foreign Families.

C A S E

## C A S E X I.

*Of a strict and expensive League to be made or not by a weaker Nation with a neighbouring and much more powerful Prince.*

**T**He *French* having violated the Peace which they had observed with the *Spaniards* in the time of the *Spanish War* in the *Netherlands* against the *States*, they entred into a stricter League with the *Dutch* thereupon, whereby it was stipulated between them, that they should yearly at one and the same time, enter with their formidable Powers into the *Spanish Netherlands*: Now there was a Debate arose in the Assembly of the *States*, Whether that League was conducive to the Good of the Republick?

*Opinions.*

They would not all agree in their Opinions concerning this Matter, some of them being by no means willing to enter into a stricter Alliance with the *French*.

1. Because when a People that are inferiour in Strength and Power enter into a League with more potent Princes for performing the same things, and bearing an equal Charge with them of a War, the more powerful Confederates frequently commit Ravages and make Booties, for no other reason but because they have exceeded the Bounds of their Power and Fortune in the Execution and Administration of Publick Affairs.

2. When



2. When by the united Power of their Arms, in order to the equal promoting of each others Fortune, Success crowns their Undertakings, a Difference does usually arise between the Confederates about the Partitions of their Acquisitions, after their Designs are compleated, wherein they generally fare the worse who were the weakest in Power before the War, and are more so after the Conclusion of it, by reason of the Charge that did attend it.

3. This League could not possibly be put in execution without more Charge, and consequently heavier Taxes; wherewith the Common-wealth was already so burdened, that more could not easily be extorted from the Subjects.

4. Altho' the *French* King made an offer of lending some Mony to the *States*; yet it was a safer Way for a Republick that was inferior in Strength to owe nothing to a more powerful Prince.

5. More powerful Princes very frequently fail in the execution of Leagues and Confederacies, and weaker Powers are not able to force them to perform their Stipulations, whereas the more powerful side can easily bring the weaker Party to a Compliance.

But others upon this occasion were of different Sentiments, and very vigorous for their entring into a stricter Alliance with the *French*; arguing,

1. That while they fought singly, they were apprehensive of their being too weak to withstand so powerful an Enemy; and the best way to obviate the Weakness of each single Party was, by entring into such a Confederacy, and so unite their Counsels and Arms together.

2. That the Enemy, when attacked at the same Time and in the same Place with a double Power,  
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by such as strove for and aspired to the performance of the same Design, would undoubtedly prove inferiour in Strength to them and be overmatch'd, for they must keep in a Body, or not be able to separate under such Circumstances, and so become liable to the Inconveniencies that must attend it.

3. An Opportunity when offered, ought rarely to be neglected, especially now that the League was broken between the *French* and *Spaniards*, and that the *French* were not only under obligation upon account of their Confederating with the *Dutch* to be tight, but as it were involved in the same bottom: they must think the Common-wealth would seldom meet with such good Terms or Opportunities, and therefore they ought not rashly to postpone the use of them, seeing the *French*, without this League with the *Dutch* were confirmed, could easily accommodate Matters with the *Spaniards*, and perhaps would renew their Alliance and enter into new Stipulations with them. Which if they should do, then the *Dutch* would be left alone, and so unable to sustain the Weight of the whole War in the *Netherlands*.

4. They ought also to have an Eye upon the Motions and Designs of the *Austrians*, who were common Enemies to both Nations; that the greatness of their Power consisted in the Leagues they made one with another, whereby they espoused each others Cause and Interest, and therefore their Power did so much the more increase; insomuch, that in order to cope with them, their Adversaries were to take and pursue the same Counsels.

5. It was to no purpose to urge, that Differences would arise about the Division and Distribution of their Acquests in the War from the Enemy, seeing that Evil might be prevented by particular

ticular Articles and Stripulations made in the League before the same were put in execution; and that certainly the Use of a Victory was not to be lost by a vain Fear, which would preclude the Way to a League, and by it to Victory.

6. That it was in vain to argue, that the Charges of the War would be too heavy, and the Common wealth not able to bear it; for it would be better for them to exert their utmost Strength at once, and by that means accomplish their ends, than part thereof only, and become liable to a continual Charge, and for that reason succeed in part or not at all against the Enemy; seeing a chargeable War would be rather cherish'd by this means, than taken away, and that the Enemy by small Overthrows should not so much be cut off, as kept in exercise.

7. Lastly, If they had any regard to the Similitude of the Cause and Place, and that the *Dutch States* would hardly ever want the Protection and Friendship of the *French*, they might very well conceive, that their Interest was even advanced by the good Fortune of the *French*; and therefore that those things were not to be rejected that concerned the common benefit of both, and, as I may say, allied Nations.

*Resolution.*

After many things were urged and rejected on both sides, at last they concurred with their Opinions who were for entering into a stricter Alliance with the *French*, as being very useful to the Common-wealth.



*The Event.*

All things succeeded very well, till the Peace of *Westphalia* was made in 1648. whereby the *Spaniards* were brought to own the *States* to be a distinct Republick independent from them.

*The Judgment.*

Present Charges and such as are conceived to be too burdenson to the Common-wealth in the State 'tis in, ought never to deter either a Prince or People from pursuing their Enterprizes, if upon the expending of them, they can without staggering promise themselves the ending of the War, and so put a stop to a farther Charge; for when a Peace is soon obtained and upon good Terms, the Debts contracted by a Government in War will with the more ease be discharged: He spends the least, who, while he spends most, succeeds most; he spends most, who continually spends least, and for that reason protracts the War, and so cannot attain to the end of his Conquests; for those small Distributions, if at last reckoned up into one Sum, are and become to be the greatest, which, because they are not put together and expended, are the cause that many times nothing of moment and advantage is transacted.

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C A S E XII.

*Where Kingdoms and Republicks are divided by  
Factions and Civil Wars, when and how are  
the principal Offenders to be punished.*

**H**Enry Duke of *Montmorancy* taking the part  
of *John Baptista* Duke of *Orleans*, who  
was actually in Arms against his Brother *Lewis XIII.*  
of *France*, was surrounded in Battle and taken  
Prisoner; upon which it came to be debated in  
the King's Privy Council, what and what manner  
of punishment was or ought to be inflicted on  
him.

*Opinions.*

Some of them were more cautious and inclined  
to Clemency than others, and against cutting off  
all at once, and so did not think fit to make the  
Dukes Crime to be capital and he to be Be-  
headed for it.

I. Because next to the Royal Family, that of  
*Montmorancy* was the Ancientest and most Famous  
of any, which according to the Testimony of the  
Annals of *France*, embraced the Christian Religion in  
that Country, before there were any other Christians  
there: Besides which *Montmorancy* was a Prince  
of the Royal Blood, of which a greater regard  
ought to be had; by how much the fewer they  
were in number, and that the Salick Law which  
took place in *France*, admitted no other than the  
Male Sex to the Crown; they were therefore to  
consider that as in punishing the Royal Blood,  
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the greatest Envy was exerted, so in saving the same, the Fences of the Government and hopes of a lawful Succession was preserved.

2. That whatever fault was laid to his Charge, the Offence proceeded from the Civil War, that *Montmorancy* then followed the fortune of the Heir to the Crown, and was thro' the Necessity of the times enforced thereunto; and that certainly, if such a Necessity did not require and deserve a Pardon, yet it did without doubt a milder Punishment: Upon the breaking out of a War, between the King and his Brother, he was doubtful which side to take; if he had not followed him for former favours, he should always have been affraid of his Hatred and Displeasure; if he had followed him, the King's Cause and Anger would always have stared him in the Face, and therefore seeing the Royal Family were divided thro' a fatal Civil War, wary statesmen always thought it best to terminate such War, by pardoning the Offenders; which if not done, such a desire of Revenge would be excited upon the account of the Punishment inflicted, that would produce one Evil from another.

3. That it was the Opinion of wise Men always, upon the suppressing of a Civil War, to inflict condign punishment upon no other than the very Authors of the Faction, but that in this Case the Duke of *Orleans* and the King's Brother was the Ring-leaders of all, who as he was excused, why should not those that followed only his fortune, and amongst them the Duke of *Montmorancy* be pardoned? for he was a less Offender who followed the Colours, than the Author of the Rebellion.

4. Seeing *Montmorancy* was so great a Man, the King and those that were instrumental in ha-  
ving



ving him punish'd would contract more Hatred than Security and Power by it; and seeing also he had so many and so great Kindred and Dependances upon him, what could be expected from punishing him, than a long train of Troubles and Conspiracies.

5. Yet they were not for exempting him wholly from Punishment, but only would have it mitigated into a perpetual Imprisonment, which was a prudent Invention of their Ancestors, to restrain and as it were bind up their wicked Endeavours, who, as they excelled the rest in Power and Dignity, could not well be cut off for the Commotions already begun by them, without occasioning greater Troubles thereby.

6. And this was in a more special manner to be taken notice of, that the weight of the rest of the Princes and all Peoples hatred would devolve upon Cardinal *Richlieu* prime Minister of State, who as he was raised to that Dignity thro' the Envy of most Men, Severity was at that time certainly unseasonable; by how much the more hateful his new Authority was to the Princes, with so much the more Clemency and Gentleness he ought to conciliate their Minds towards him, instead of farther exasperating the same.

7. There could no benefit accrue from the designed Punishment; but it was not hard to foresee that the greatest detriment might arise therefrom; for they were now pretty quiet, as having been worsted in the War, but not out of any love to the Publick Peace, but necessity; for they would lay hold on any Opportunity to raise farther Commotions, and a desire of Revenge would easily present them with it.

8. Lastly, they desired them to consider, what would become at last of the Authors of the

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Duke of *Montmorancy's* Death, when the Duke of *Orleans* after his Brothers Decease came to the Crown, of whom there was now no doubt but he would succeed him, seeing the King had been married almost twenty Years and had no Child; therefore they ought so to act at present, as to have thoughts and foresights of futurity.

Others were of different Opinions and prest eagerly that *Montmorancy* should be put to Death.

1. For that *Montmorancy* had been guilty of Treason the greatest of Crimes, for the pardoning of which, as it was now and then advisable, when the Crime was only exemplied in one Person, and not an armed Multitude; so it favoured too much of Credulity then to forgive him; wherefore his Punishment alone might be of great use to prevent the further Rebellion of others, who were inclinable to raise Tumults and Disturbances in the Kingdom.

2. That it signified nothing in this Case to urge the Greatness and Splendor of his Family, for the more illustrious the Person was, the greater his Crime; and such an illustrious Example of Punishment, must the more affect Persons of inferior Degree; when the chief Ring-leaders were punish'd, those of less quality would attempt nothing for the future, all hopes of Pardon being now cut off, whereas before they might repose all their hopes only in the greatness of *Montmorancy*.

3. It was unnecessary to make mention of the Royal Blood upon this Account, seeing there were so many then in being; they were not to enquire, how many Princes there were of them, as how good they were, that the Royal Blood was stained and abused by them, who being descended therefrom, yet were intent upon disturbing the

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## *Of the Punishment of great State Offenders.*

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Tranquillity of the Kingdom; nor could the King's Enemies and the Disturbers of the Publick Peace be reckoned amongst the Bulwarks of the Government? Farther, seeing the Princes of the Blood are almost the only Authors of the Faction and Rebellion, he deserved very well of the Publick, who in order to renew their Obedience towards the King, did so punish one of that Rank and Fortune, that all might take warning by his Example and become better Subjects.

4. That Civil Wars are best terminated by granting Pardon, in case they have assured hopes things will be amended thereby; but in the mean time an end is to be put to it by severity, when in such great Commotions of State, perturbations of mind, and where there is so much power, more are ready to engage themselves into Rebellious Factions, because they find others that have been taken go unpunish'd.

5. That it could not be denied, but that the Duke of *Orleans* the King's Brother was the head of the Faction; but as he was not exempt from a grievous Crime, so his Person was at that time above being punish'd; for he was the next undoubted Heir of the Crown, in case God Almighty by an extraordinary act of his Favour did not vouchsafe the King an Heir of his Body; and therefore seeing no punishment could be inflicted upon the Person of his Royal Highness for so grievous an Offence, they that were next to him in Honour and Dignity were not to be exempt from it; and if so be one for all was to suffer Punishment, and that the Principal of the Rebellion could not be punish'd at all, why should not they inflict a capital Punishment upon him that was taken, now a Prisoner; and found actually in Arms? To this might be added, that the whole Faction, where-



of his Royal Highness was the Head, might by inflicting of the said Punishment, be deterred from rebelling any more; for seeing he, whom the rest followed, was not punished, yet those being punished, who were his more immediate Followers and next him in Quality, the rest for the future would scarce follow him; and this undoubtedly would put an end to the Faction: Lastly, That the Duke of *Montmorancy's* Case, and not that of the King's Royal Brother, was now under their consideration, and therefore they were not here to determine, what his demerit was, who was the Head of them, but what his was, who followed him.

6. It was to no purpose to pretend Necessity in the Case; for as it could not be denied, that scarce any one in the Course of a Civil War could escape being engaged on one side or other; so 'tis much more just under such necessitous Circumstances of Time to follow the best Cause; and pray which can be a greater and juster Cause than that of the King's? yet *Montmorancy* preferred the other side before it.

7. It signifies nothing to alledge; that by inflicting of Punishment an Odium will be contracted therefrom, of which Mens Minds cannot be dispossessed, yet Nature can remove the same; Let wicked Men hate Justice and the Executioners thereof as much as they please, provided they are not in a condition to injure them; to Punish and provide for Futurity, were the principal Things to be done in this Case, the one being the Dictates of Prudence, and the other proceeding from a Principle of Justice; and that now both those Vertues were to be practised and a fair Opportunity for it: So much the more safety might be expected from Divine Providence, by how much the  
more

more wicked Mens Hatred did increase upon account of the Justness of the Punishment inflicted upon some of them.

8. No milder Punishment could be proposed, that of Imprisonment being light in comparison of the greatness of the Offence; and that in those Cases they did not so much inflict a Punishment upon Offenders, as, one may say, only delay their pardon. For the Minds of Princes, after long Imprisonments, were frequently inclined to Mercy; and so when *Montmorancy* was once got out of Prison, he would attempt the same thing, (so obstinately wedded he was to the Faction) and wreck his Resentment upon the Authors of his Punishment let it be of what kind it would. That therefore he might not punish others, he was now to be punished himself, though scarce enough for his demerit; or least he should be twice punished by reason of sad and new Commotions raised in the Kingdom, he was once to be dealt with for all, and expiate his Crimes with the loss of his Life; that in case he were kept alive and in Prison, his potent Friends and Favourers would attempt and dare to do any thing for his Liberty; but when he was once cut off, then they could have no farther thought or remembrance of him. Lastly, That the Punishment of perpetual Imprisonment was invented and often used, when the Machinations of wicked Men could be fully restrained thereby, but that the same was in vain and of no use, when the Evil was but fed and increased by it. And that therefore it was better not to have, than to have Prisoners, and them continually kept under restraint, for whose sake, as long as they survive, others are encouraged to attempt the raising of Commotions and the perpetrating of any Evil.

*Of the Punishment of great State Offenders.*

9. As for the Cardinal, Ministers of State were safe enough, that his Power subsisted in that of the King's, and that the King's Power could not be secure and entire, without his Enemies were punished according to their demerit; and for the King he must be supposed to have every thing in him that could be of use for the prevention of all wicked Endeavours and Designs.

10. And in the last place, as to the Duke of Orleans his coming one Day to the Crown and any Inconveniency that might arise therefrom, it signified nothing; for when Princes were arrived at that height of Fortune, they did not usually think of revenging any supposed Injuries done them, when they were in a private State; but on the contrary, what any one had done against others, nay even the Successors of the Crown, for their King and his safety, would be taken in good part and found pleasing to them.

*Resolution.*

Wherefore they thought fit to put the Duke of Montmorancy to death, and actually did so; tho' he fell the most lamented of any that ever was cut off in France.

*Event.*

Men of his Rank were afterwards more afraid and quiet, so far as the Nature of the People and Inclination of the factious Princes would allow of it.

Judg.



*Judgments.*

That Mercy is unseasonable in a Government whereby the Punishment rather than the Crime is deferred, when the King or Government's Safety and Welfare is endangered by the flagitious Example of some great Men. He that inclines to Clemency upon account of the great Fortune of such Men, doth not judge aright concerning the Tranquillity of the Government, in comparison of which even all the greatest things ought to be esteemed the meanest by wise Men.

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C A S E XIII.

*Of Fortresses to be built or not, in order to retain  
surrendred Cities in obedience.*

**T**He States, in the Low-Country Wars, by the united Power of their Arms, forced *Groningen*, a strong City near *Friesland*, and from which the Province has taken its Name, to a surrendry, and one of the Articles stipulated in the Capitulation was, *That the States should never build any Fortress or Citadel in the City.* In the mean while a great many of the Cities which surrendred a little after refused to receive Garrisons, pay Contributions, and give other Marks of Subjection to the Conquerors.

Now there arose a Debate in the States, Whether it were not highly useful and necessary, in order to restrain the Insolence and undecent Behaviour of the *Groningers*, that they should build a strong Citadel in that City.

## Opinions.

The *Groningers* and such as favoured their Interest, did not think it proper at all to build a Citadel there.

1. Because it was mutually articed between both Parties upon the Subjection of the one and Acquisitions of the other, that the *States* should never attempt any such thing; which Stipulation, if violated by them, then every thing was taken off, that was ever thought of proper to unite Nations together: Moreover, seeing the *States* stood in particular need of being celebrated for their Clemency and Observance of Faith, in order to draw other Provinces in the *Low-Countries* into their Interest, in opposition to the Perfidy and Cruelty of the *Spaniards*, who for that reason were hated by the People, they ought to consider again and again how much they should excite the Hatred of the People against them, in case they built a Citadel there contrary to the Capitulation.

2. That the building of that Fortress would cause a Diffidence between the *Groningers* and the rest of the *United Provinces*, which was indeed a Misfortune that always tended to dissolve Empires and the Duty of Subjects; for the *Groningers* would neither be without fear of an unjust Government, as oft as they cast their Eyes upon the Citadel, which was in a manner the Badge thereof; nor could the *States* entrust the Management of the Publick Affairs of the Government with any other, who were retained within the Bounds of their Duty more out of Fear and by a Garrison imposed upon them, than Love.

3. That

3. That the Love and Affection of Subjects towards their Masters and Conquerors, was the greatest Fence they had for Victory and their Empire, which could not exist, or at least must presently be lost, in case they were once possessed with a Fear and Suspicion lest their Governours should seize their Liberties.

4. Because Fortresses are usually the Instruments of Servitude with bad Princes, who having swerved from those Paths of Vertue whereby they could by no means conciliate the Affections of their People to them, had always placed their hated Security in Fortresses alone.

5. That they ought in a more particular manner to weigh that which they had yet never done elsewhere, viz. to impose a Citadel as a Curb upon a surrendered City, tho' the People were saw-cy and impertinent; that milder Remedies and such as were more grateful to the People were always to be made use of, whereby their Perfidy either could not be restrained with the fear of them, or Fidelity confirmed; and therefore that such new Procedures in a Commonwealth would always be the Seminaries of and afford Arguments for fresh Hatred and Jealousie.

6. And they ought to consider above all, that the erecting of such Fortresses favoured of *Spanish* Tyranny, and that if the *United Provinces* expected a Fortune different from theirs, they ought to pursue different Counsels and Designs, and at leastwise to lay them aside, for which Men had been accounted either the Betrayers or Infringers of the Publick Liberty, and so proscribed for it.

Others in opposition to these Arguments urged others on the contrary side, saying,

1. That



1. That they could not deny the Article which the *States* had made with the *Groningers*, whereby the former were oblig'd to build no Citadel in that City, and that the *States* had always apply'd themselves to the observance of the said Articles, while the *Groningers* in the mean time had very impudently violated the same; and so they were not now oblig'd on their part to observe them, at leastwise they could not press them to it, who had been first guilty of the breach of them, and therefore they could act nothing contrary to a Capitulation, by whose Articles they were not now bound; why should they require of the *States* to observe what the *Groningers* had been deficient in? Lastly, If they made a right Judgment of the thing, the *States* were minded to build a Fortress there in order to have the Articles performed. That they were not only to be just in the Performance of the Articles and Stipulations agreed on by them, but the same was to be performed even to them that observed them by the other Party, who, if they be not such, then no Body is tied up by them.

2. That no Diffidence was to be excited by building of a Fortress, but the same, if already in being, might be taken away and averted; and therefore it was necessary to build a Citadel there.

3. That the Love of the Subjects is indeed the greatest Security their Rulers can have; but for them to acquiesce with a Pretence of Love, when Hatred and a Disdaining to Obey had seized on the Minds of the Subjects, this is no other, than to hate themselves and be wanting to their own Safety.

4. Fortresses are usually Instruments of Servitude, where they are erected for the sake of increasing an unjust Dominion, but not for the preserving or restoring of a lawful one; that this makes the

difference between their End and that of Tyrants in their Proceedings: And indeed, seeing they have hitherto bore Arms for their Liberty, why should not they be free by Fortresses and the like Means to retain such as had surrendered themselves to them (and were now impatient of Liberty) in obedience?

5. Tho' the *States* had not yet done this any where else, yet that was no Plea against the Necessity they were now under of doing what they were about; that new Remedies were required for new Evils; that that is not to be omitted in the Administration of a Government, and should be of use thereunto, because it was never done elsewhere or at another time.

6. That it was to no purpose to object in this Case, as if such a Procedure were done in imitation of *Spanish* Tyranny, and so suggest from thence, as if this would excite the general Hatred of the People against the Government; for whatever is done by ill Men, which good Men may apply to a good use, the latter are to do the same, not according to the gust and in imitation of the Wicked, but by accommodating it to their present Benefit and Advantage: And for the rest, the World had had sufficient Experience, that the Arms of the *States* were drawn against Tyranny and oppressed Liberty.

8. Lastly, If the *Groningers* did but consider the State of Things, and that of their own City in particular, they might easily perceive, it was the Interest of all Cities, both good and bad, to erect Fortresses; for by that means the Liberty of those that were Good would be defended against the Evil, who thro' Fear being kept within the Pale of their Duty, this must redound to the Benefit of the other.

*Reso.*

*Resolution.*

Hereupon there was an Order made by the *States*, that a Fortress should be built at *Groningen*, for the restraining the Insolence of some of its Citizens.

*Event.*

This Resolution of the *States* has tended very much to the Security of their Government and the Preservation of the Peace of the City of *Groningen*.

*Judgment.*

Those Capitulations, once agreed on, are not to be infring'd for the use of the Publick, when some of the Articles are not observed, in order to the obtaining and confirming of the end of the said Capitulation towards those Persons, who being bound by them are the first violators of the same; and that as for surrendred Cities, which are yet ready to rebel, incorrigible thro' frequent Admonitions, and cease not to be mutinous and troublesome, there is no Remedy, (which, however hateful it be by Name) is yet so useful, as to build Forts and Strong-holds as a Curb to such conquered Cities and Nations, and an Ensign of Empire over them. For how hateful soever that may be, yet the Odium of it may easily be removed and averted by good and mild Princes and others in chief Authority, by a gentle usage of their Power so establish'd over them.

CASE



C A S E XIV.

*How are Princes and chief Magistrates to demean themselves, and avoid the odium of Partiality in deciding domestick Differences arising between Cities, especially in the time of a Forrein War and Difficulty?*

**V**When the States General of the United Provinces, upon their shaking off the Spanish Sovereignty, coalesced into one Body, either the old Controversies were renewed between the Cities, as it usually happens, or many new ones did arise about preheminance of Jurisdiction, and other things of that Nature, which came under the Cognizance of the States and Prince of Orange; wherefore it came to be debated, what was best to be done under these Circumstances for the benefit of the Common-wealth?

*Opinions.*

The Members of the States disagreed in their Sentiments upon this Occasion, and some were of Opinion the Controversies in hand ought to be decided according to the rules of Justice and Equity, or by their Publick Authority, urging,

1. That it was consonant to the Rules of Justice and Equity, that every one should be satisfied in their just pretensions of Right, even according to the Prescriptions of the Law, which if it were not observed with sincerity and diligence, especially in new erected Governments, the Subjects and others would entertain but a bad Opinion of them.

2. That

2. That it became the supream Power of a Nation, to interpose it's Authority, where obscure Controversies did arise either between Cities or single Persons, and that it was not convenient, in whose favour soever the matter was decided, to incline to either side; seeing it was the Interest of the Common-wealth to prevent perpetual Jars between it's Subjects; and if so be they are to deal thus in respect to private Persons, so much the more should they in reference to whole Cities, seeing their Controversies are usually attended with greater Disturbances.

3. That 'tis for the Interest of the Publick Peace to decide such Controversies without delay, which if they do not according to Law and Authority, but that way be given to the Humors of the contending Parties, every one would take upon him to right himself by Arms and Violence; from whence nothing but Civil Wars could be feared or expected.

4. That they could hardly consult together for the Publick Good, who are at variance one with another about their particular Concerns: Seeing therefore the States themselves consisted of Persons deputed thither from the respective Cities, who were at variance and enmity with each other, what good could the Government expect from them?

These things, altho' they seemed grounded upon Equity, yet the wiser sort argued against them, and determined it was for the interest of the Commonwealth, that such Controversies should be rather deferred than decided, and yet that in the meantime satisfaction should be given to the Parties at variance. The Arguments were,

i. That such sort of decisions would tend not so much to confirm the Peace, as to infringe it, for

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tho' the matters in dispute were decided according to the rules of Equity, yet that the Party against whom the Cause was given, would rarely be brought to submit and acquiesce with the Determination, whence would arise a greater Hatred between the differing Parties than before, and more Displeasure conceived against the Judges themselves, which Inconveniencies, of any other, ought more particularly to be avoided in a new Common-wealth, wherein the Consent of all Parties was necessarily required.

2. That there were ways whereby in the mean time the Parties might be pacified without deciding their Differences; of which you have an Account in the Resolution following; for Controversies might be removed, when the Causes thereof remained still on foot.

3. As it is a very just thing to act and decide Matters according to Law, when there is a necessity the same should come to be decided, and very unjust for any to swerve from that Rule; so 'tis not necessary to decide all Things and that at all Times.

Magistrates are tied to a care of duly administering Justice, yet so as all Acts of Humane Prudence are to accompany the same; whatever things are done and decided, ought to be just, but to act and always to decide whatever is just, is not at all times expedient for the Common-wealth.

4. For a Government to interpose its Publick Authority, in respect to Controversies between Citizens that are obscure and doubtful, this is no other than to prostitute the same; 'tis to confirm your Authority in respect to the overcoming Party, but to render it hateful and to lose it in regard of the other succumbing side; the which, with how much danger 'tis attended, especially in a new Common-wealth, none can be ignorant of.

5. See-



5. Seeing the Good of the People is the highest Law of all, its most convenient for the benefit of the whole Community, that the decision of Rights of private Persons be deferred, and the same is to be preferred before all Laws whatsoever.

*Resolution.*

It was enacted, that their Differences should be rather at present decided than the Causes of them; for which end they thought fit to make use of different Methods, according to the different state of every respective Case that came before them.

1. When there was a Dispute about this or that Jurisdiction, concerning the Master and possessor of this or that Place, it was thought advisable to leave him who had hitherto the use and possession thereof to have it still; and, on the other hand, they were in the mean time to give satisfaction to such as pressed for it and laid Pretensions thereunto by inspecting into the Merit of the Cause, which Procedure could not be resented by either Party, when by this Method they came at length to a final decision of the Matter; for the full Examination thereof, being deferred and lengthned out to many Years, the decision to be made against the losing Party was thereby deferred.

2. When there were two Controversies depending between the same Persons, both Parties were so to be satisfied, that for the present use one was allotted to one and the other to the other Party, and so somewhat granted to both of them, until the Interest of the Common-wealth was such as to allow of a final determination of both the Controversies.

3. When Controversies do arise about a Matter which has been used and possesst sometimes by one  
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one; then by the other Party, somewhat was left to each of them, and the Administration granted to Parties either jointly at the same time, or by turns successively, till the whole Matter was decided; but if it so hapned, that both Parties could not at present be satisfied with these Protestations, there was a Protestation and Exception allowed according to Law, and the same registred as valid.

*Event.*

By this means it was so ordered that no Party should think he had been prejudiced in or lost any thing of his Right.

*Judgment.*

In publick Suits, when they cannot be decided either one way or another, without incurring an Odium thereby, where 'tis dangerous to grant any thing in favour of some, and not very safe to deny it others, it's esteemed to be a present Remedy to defer the decision of it, which Delay, as being less invidious, may be effected by the Methods above-mentioned.

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C A S E X V.

*When and how are chief Magistrates and their Ministers and Embassadors to make their Protestations against others in a Publick Affair.*

**A**T the Council of Trent, begun by Pope Paul the Third, Anno 1549. amongst the Embassadors of divers other Princes who assisted thereat,  
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those of *France* and *Spain*, as they were wont to do, contended about Precedency; and so the Matter came to be debated, what was most advisable for them to do, so as not to injure and prejudice the Honours of their respective Masters?

### *Opinions.*

Some were for having them to withdraw and leave the Assembly wherein they could not hold the Rank and Dignity that became their Masters, saying,

1. That whatever befel the Embassador there, the same regarded his Master.

2. When any one is about giving his Opinion in an authoritative Matter, he ought to be the same Person he is acknowledged to be; but that he is not to be acknowledged to be the Person he is, unless he give his Opinion in his Place.

3. Whatever things are decided they are of none effect, unless the Votes of the Princes their Masters are delivered by the Embassadors from a Place suitable to their Rank and Dignity; for Princes have always objected against those things, as not being their Act, which their Embassadors have done without their Command in a Place that became not their Dignity; for where their Command is not observed, Princes will not be bound to stand by other things transacted in their Names; and, above all things, they have it in special Command from their Masters to have a Regard to their Rank and Dignity upon all Occasions.

4. That it was to little purpose for them to enter their Protestations in the Case, since they were no more than vain and transient Words, and past thro' one Ear into another; for an Example of the Fact would in the mean time remain in their

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fons, which would be produced in the Case of another Prince's Embassador.

Others were of opinion, that if each Prince's Embassador took place by turns, this would satisfie both Parties; for seeing that each of them claimed it as their right, if the same were allowed them by turns, both would be equal and neither seemed to be postponed.

But those who understood the thing best, alledged, that he that came first every Day should have the Precedency, and that a Liberty should always be allowed each of them to make his Protestation against him that came first in a solemn Form.

i. For they ought not to forsake the Assembly, but all agreed it was necessary they should act for that end for which they met together; that the Dispute only was about their manner of acting, which, as to the Place, might be made easie, and offensive to no body, if good Care were taken in the Matter.

2. For they were not every Day to change Places and have Precedency by turns, for the difference by this means would not be taken away, but still continue, for he that came first would take place; but each Party urged, that the Right of the Princes their Masters was not continually to be interrupted; how or what use therefore could their taking of precedence by turns be?

3. That therefore the Cause of either Party was left unviolated and safe by a Protestation; for by this means it would come to pass, that wheresoever any of them sate, he was to remain as such, and as himself desired to be esteemed, neither could there be a Prejudice done to the Rights of any of them, when the same were not at all infringed.

4. The Protestations indeed consisted of Words, but at the same time they had the Efficacy of Things,

### *Of the Precedency of Embassadors.*

Things, and would not only be heard for the present, or at length be buried in oblivion, but would endure to posterity, and remain an Example of their preserving their Rights, if the Proteftations were amongst the other Acts of each Party entered into their publick Registry.

#### *Resolution.*

The major part of the Assembly agreed to this last Opinion.

#### *Event.*

He that came first every Day had the precedency, and the Proteftation of him that came last was daily renew'd and entred into the publick Registry, whereby their difference about precedency was removed, and the Ministers proceeded with much unity to consult about the publick Affairs that lay before them.

#### *Judgment.*

By this Proteftation the Rights of either Person is preferred before the others, and at the same time is by every one maintained; whereby a thing that is done, seems or is thought not to have been done, whereby lastly a thing that is done at present, is accounted as not done for the future, and therefore 'tis of vast use to a Nation in controversies of this Nature, wherein another manner of decifion cannot be obtruded without much Enmity and Inconveniency.

A Proteftation is necessary, when 'tis not safe to determine a Matter that must necessarily be done, how it should be done; for it is of force, when

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does not consist of Words only, which are after buried in Oblivion, when the Example of the other Fact still exists, but when tis registred amongst their Publick Acts in the Common-form; for as Words are wind in Publick Affairs, so they are Authentick, when solemnly entred into the Registries.

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C A S E XVI.

*When a City is divided by FaCTIONS and Civil Wars; Quere, Whether the Debt contracted by one side, upon the uniting of them, is to be understood to be owing by the whole Community?*

THE Citizens of *Athens* being formerly divided into FaCTIONS, some of them being wearied with the unjust Government of the rest, retired to the *Pyraeum* as a place of Exile; while the rest who were the more powerful and stronger Faction stayed in *Athens*; hereupon these last agreed to borrow an hundred Talents of the *Lacedemonians* in order to besiege and force the other back into the City, who had withdrawn themselves into the *Pyraeum*, as aforesaid but these Com notions being sometime after appeased, their Creditors the *Lacedemonians* came upon them, and by their Embassadors required the repayment of the hundred Talents they had left them.

Upon this the *Athenians* called an Assembly, and the Debate between them was, what they were to do about that Money and who was to pay, whether those who had besieg'd the rest and actually borrowed it, or the besieg'd, who by



*Money borrowed by part of a Society;*

that means were compelled to reunite with their ancient Body to good purpose; or else whether both Parties were not to pay, that is all the People of *Athens*.

It was a matter wherein there was great management, and may be of use upon divers Occasions, and give great light now and then in discussing or deciding intricate Points of Government, even to the quickest fought States-men and those at the Helm.

*Opinions.*

They who were besieged in the *Pyraeum* said, they owed nothing and denied to pay their Proportion of the Money owing to the *Lacedaemonians*, of whom they had borrowed none; and they urged,

1. That the Money was borrowed by their Enemies, nay and borrowed too in order to besiege them, and therefore the Money was borrowed against them and not for them.

2. That no one against his Will could be bound or was so to a third Person, by one in whose power he was not, but this Money was borrowed against their will and unknown to them; besides they were not in the power of those who staid at *Athens* and contracted the Debt; that their Cause and Government was distinct from the others; how then could it be, tho' they were united since, conjoined and understood to be the same Body, could they do what the others did, and so contract the Debt at the same time as the others, and upon that account be bound to pay it?

3. That it was to no purpose to urge that the Money was borrowed of the *Athenians*, and that upon enacting an Act of Oblivion, they were at

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this Day all Citizens of the same City, viz. all *Athenians*; for in conformity to the rules of all Laws, the time of borrowing the Money was to be regarded, whereby it would appear plainly that they lived at the *Pyraeum* and not at *Athens*, and pursued their own Methods and not those of the Republick of *Athens*, which seemed to be unjust. What Debt therefore was now contracted by the Common-wealth, they owed, as they were *Athenians* and fellow Citizens living in the same place with the rest; but whatever was at that time contracted, that they did not contract as being no *Athenians*.

4. If all things were rightly enquired into, it would be found that the *Athenians* had not really contracted the Debt, but the Tyrants; those who were in the City, served under the Tyrannical Government of a few, but they who retired to the *Pyraeum* were free and the true *Athenians*, the Tyrants therefore who oppressed the People, and had contracted the Debt were liable to it, and not the Citizens, who because they would no longer be oppressed in their Liberty, had removed from their Habitations and retired into another place; and it signified nothing for the *Lacedaemonians* to urge the name of the *Athenians*, as having lent them the Money, for they were deceived under that Name, since they had not dealt with the *Athenians* but with Tyrants; however it was, They were at least free; nothing could be demanded of them.

5. Lastly, there was none of that Money used and applied to the Publick Good, seeing it was only taken up to support the Party which remain'd in the City, and for the oppressing of those who had retired out of it.

*Money borrowed by part of a Society,*

And what could be gathered from hence but that they had nothing in Common between them; for if he who reaps the benefit ought to bear the Burden, how could they well press them to bear the Burden, who had been so far from receiving any benefit from the Money borrowed, that they had suffered nothing but Violence, Sword and Calamities therefrom.

Others argued no less cunningly against them to the following purpose.

1. That in Civil Wars both the one and the other Party were equally Citizens, from whence came the name of Civil War; and therefore upon the terminating of Civil Wars, and the Reunion of the Citizens into one Body again, all the Citizens conjointly were bound to pay the Debts contracted by either side.

2. However the matter were, they were all now by Act of Oblivion coalesced into one Body, and were no less *Athenians*, than they that were such an hundred Years before, and would become so within such a space of time to come; that a City was a sort of Contiguous thing, joined together by one continued Series; which tho' some succeeded others, yet it did not admit of any Change, but remained always conformable and like it self, as long as it retain'd the tye of Community, its due Series, and Unity.

3. Hence all were now justly bound to pay, tho' all the Planks were changed, *Titius* his Ship, was the same still, and tho' they had a supply of new Citizens, were not they Citizens, were not they to be reputed *Athenians*? What was the difference between some coming in the room of others by successive Generation, and others being united to the Community by reconciliation? For tho' fresh Waters continually succeed others

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in their Course, yet the Seas and Rivers are still the same, and he who hath borrowed somewhat yesterday, owes it to Day, tho' perhaps yesterday's obligation is transferred upon others also: As lastly, a Person that is invited to Supper and comes when it is over, yet does not come uninvited; so notwithstanding any change of Persons or things, the City is always to be reputed to be one and the same both in respect to all that are present, and their Successors; and therefore they are bound to pay what ever Debt the City hath contracted, be it at what time it will.

4. Nay and the daily Practice of all Nations made firmly for them; for he that is a Foreigner, and comes to be made free of any City and admitted to partake of the Priviledges of it, and never before had sojourned in or been a Citizen of it, yet was bound to the payment of the Cities Debts, tho' perhaps contracted an hundred Years before; why therefore should not they who came into *Athens* from the *Pyraeum*, become under the same Obligation, especially since they had been Citizens before, and were now also become Debtors, tho' they had never before been Citizens of *Athens*.

5. As a thing that has been borrowed by a People is justly required at the hands of those People, tho' amongst those that received it there was such a Change, that there was none of them alive; so it mattered not whether all the *Athenians* were then at *Athens* or not, seeing what the People of *Athens* borrowed of the *Lacedemonians*, the *Athenians* received, and the *Athenians* now, whoever they were, did owe the same, neither did it signify any thing for what Cause it was received, and whether they were Tyrants or *Athenians* that had it, for it was received by the Publick, and therefore the Publick owed it.

6. Lastly,

*Money borrowed by part of a Society,*

6. Lastly, It was no Argument for them to offer, that those who received the Money and staid in the City, had as it were the benefit of it only; but they who retired to the *Pyraum* damage from it; for those Exiles if they considered things aright, had reaped much benefit thereby; for by the Siege, which was carried on by the said Money, the general Act of Oblivion was brought about, so as that the Citizens were thereby restored to their own City again, as also Liberty; why therefore should not they bear the Burden, or Contribute together with the rest, out of their own private Estates, their Proportion towards the paying of the Debt due to the *Lacedemonians*.

*Resolution.*

The Assembly upon mature Deliberation were of Opinion, and resolved by a majority of Voices, that the Debt was owing by all the Citizens.

*Event.*

This did very much cement their Friendship, and became the first and firmest Pledge of the general Act of Oblivion.

*Judgment.*

This was well managed and determined, whether we consider the very Terms of the Amnesty or the other reasons urged by those who tarried in the City; for there could be no use of or benefit arise from the Amnesty, unless after the enacting of it, all Controversies were silenced, in examining of which those Actions would be commenced, which would renew the ungrateful remembrance

of such things as had been transacted during the Civil War; or decided in such a manner, as if there had been no Parties or Factions before in the City; for what other end has every Act of Oblivion, than either an Oblivion or equality of Parties and what past between them; for without this, Factions are not laid, but seem still to survive, and are easily like to break out again.

Moreover, if we consider the Reasons produced by those who continued in the City, they'll be found to be solid and agreeable to the rules of Government, in the Administration of which; when others withdraw, they who are constant to themselves, and forsake not their Stations, are to be looked upon, as having done all things well, according to the Authority repositied in them, and like real and true Magistrates; which is so true, that after the uniting of the Parties upon the terminating of Civil Disruptions and Broils, that which continues firm and remains at the helm of Government, will impose a necessity upon the other Party that withdrew, of complying with what the first has done in his Government; but the last cannot do so by the others, unless the matter has been otherwise agreed on in the Articles of the Amnesty: Of so great a Moment and Consideration it is, justly to administer the publick Affairs of Government; for if what has been said could not be done; especially in regard to the Charges caused by those that withdrew, the Commonwealth would be incapable of paying all; nay it would by this means be brought to pay more than the Charges, seeing those who withdrew themselves, were wont in managing their Affairs, either to spend their own, or contract more Debts not by Publick but private Authority; what ever therefore those that withdraw



draw and forsake the Government do, they are to be looked upon as acting in a private Capacity, but the Government which they have forsaken, whether the Cause of their withdrawing be just or not, are not of right bound to it; and this also is true and takes place, when that Part which withdraws is superior to the other and at its own Charge acquires and takes upon it the Administration of the Government, of which it has dispossest the others; for seeing those that withdraw are vested with no publick Authority, there is no regard to be had to the Expences they have been at; if the Government be forced to spend its Treasure and Strength by private Authority, there would be no end of Petitions, and false and unjust ones would be preferred, which yet could not be proved to be so by any publick Accounts; and lastly every miser and oppressor would be ready to lay a claim to private Charges expended for the support of the Government.

Upon the Expulsion of the King of *Spains* Authority and the Establishment of the *Dutch* Republick, the *States General* thought fit to act much after the same manner; for they allowed of and received none of their Petitions, who at their own Charges or by Debts privately contracted upon their Defection from the King of *Spain*, acted for the publick Liberty; for they were looked upon as having acted every thing by private Authority: The Government owes nothing, but in such a Case, wherein the publick Authority both addeth right and weight thereunto; and besides it was thought unadvisable to give way to the Petitions of all Persons, which they might prefer or increase at their Pleasure; and seeing there were no publick Orders, or Accounts, whereby they might examine them, they could not, as has been already said, be convinced of Falsehood.

C A S E XYII.

*If Subjects abuse their Priviledges and that sudden Evils do arise therefrom, how ought Princes or Magistrates to behave themselves either in taking away their Priviledges or in punishing the Offenders?*

**W**Hen *Lewis XII.* who was an excellent Prince, came to the Crown of *France*, he began to innovate and reform many Irregularities which were connived at by former Princes, that had been very detrimental to the Common-wealth; Among other things, when the Professors and Students in the University of *Paris* used too much Licentiousness and Liberty, for which they pleaded the Priviledges and Immunities formerly granted them; there was a Debate held in the King's Council concerning altering, taking away or interpreting of them after another manner.

*Opinions.*

There were some of the chief Councillors who urg'd, That the Priviledges formerly granted the University, could neither easily be taken away nor altered: For,

1. The King was sworn to maintain the Law and Grants of his Predecessors, that his Faith and Honour engaged him not to fail in a strict observance of them; that Prudence would excite him to it, lest he should debilitate the Authority of former Princes, and his own in theirs, seeing every Prince that succeeded was as much and no more that he esteemed his Predecessor to be.

2. That

2. That most of the Priviledges now in dispute were Instances of Royal Favour, the which being restrained or taken away, the King's Government would be suspected to be cruel, or at least hated; but that now at leastwise in the beginning of his Reign it was most advisable for him to endeavour to attain the reputation of being a gracious and merciful Prince.

3. When the Priviledges of some are taken away, others will suspect and be affraid, from the Example of their Fellow-Subjects, lest they also lose their Priviledges and Immunities thro' the Prince's Severity towards them.

4. They did not deny but that it was for the good of the Government that Abuses should be removed, but there was not the same reason for taking away Mens Priviledges; that without meddling with them a better Way might be found out for reforming Mens Manners; the King should leave the same entire, and with due Interpretations declare them to be such, by which the present Evils might be prevented; for to act that which is best without an invidious Name or Title, was looked upon to be best for the Government.

Others on the contrary alledged, That the fore-mentioned Priviledges, which had been the cause of much Evil, were entirely to be abolished.

1. Because the King's Oath principally and chiefly oblig'd him to do that which tended to the good of the Government.

2. That every Successor was oblig'd to observe the Fundamental Laws of the Government, whose Cause is perpetual, and upon which the Prince and People have agreed in the most solemn form and manner; but that they were not always bound to the observance of particular Laws, or such as were made in favour of particular Persons or some parts



parts of the Common-wealth; not to the observance of those, which were an open abuse, nor of those which ought to be altered and changed, according to the different Circumstances of Times and Things; nor finally of those which were granted and unadvisedly allow'd by former Princes to some Persons or Societies who had the Artifice to Circumvent them with their Importunities; for if a Successor was tied to do otherwise, his Reign must be rather a State of Servitude than any thing else to him.

3. That the Cause of every Decree, and even the Decree it self was taken away, when the End was so, or that which was hoped therefrom not attained to; that the End of granting such large Priviledges to the University, was no other than to promote Learning; for when the same is either corrupted or not attained to, those things are not to be looked upon as granted, which are granted to such an end, whereof the contrary is now obtained: If when Men are vested with certain Priviledges they do not observe them, but transmit the Benefit of those Priviledges to their King, he is not oblig'd to an observance of the same: That this was as it were a tacit Contract between Prince and People, that in matter of Conferring of Priviledges, as the Use of them was bestowed upon the Subjects, so the End was to answer the Prince's Expectation; the Terms and Conditions of which Contract, in respect to the End thereof, if the Subjects did not observe, why should Princes be tied thereunto?

4. That it was not to be thought any Prince would dampen his own State and Government, but that there was manifest Injury done to the Common-wealth by such Indulgencies; nay and that we were to suppose former Princes would not allow

low of them, and in case they did, they were to be looked upon as got surreptitiously from them, under a specious pretence of the Good and Benefit that would accrue from them; and that Priviledges obtained in this manner, were to be accounted for naught, and that these were so, appear'd by the Event.

5. If Subjects and particular Persons ought not to use any Priviledge granted them, when they see no Benefit to arise therefrom, but rather manifest Disadvantage, why should not a Prince have sometimes a liberty of not observing a Priviledge granted by him, if the same prove detrimental to the Common-wealth? For the Priviledge obtained, does not compel the person that has got it, and for the same reason it should not the donor; for the Condition of Princes ought not to be worse than that of other Men.

6. The King could not be taxed with want of Clemency in case these things were altered or taken away, for the Favour designed to be conferred by such a Priviledge was not so much taken away as the Damage introduced thereby.

#### *Resolution.*

They therefore thought fit to strip the University of those Priviledges by vertue of which the Members thereof had offended.

#### *Event.*

Hereupon there was a great Tumult raised in the University of *Paris*, which had then some Thousands of Students, and a Compact forthwith made between the Professors and Students, That the first would teach no longer, and the other go somewhere else, till their Priviledges were restored.

*Judg.*

*Judgment.*

It's a dangerous thing to take away old Grants and Institutions from a Body of People, tho' even to tolerate the same ancient Concessions, when to the detriment of the Publick, by degrees overturns the Government: And therefore 'tis better to tolerate such Grants by giving a new Interpretation of them, than wholly to take them away; for to take this last Course, will be looked upon as Violence and hateful: But by giving an Interpretation to the same, the best end is preferred, and easily obtained; and Princes and supream Magistrates act wisely, when they reserve unto themselves the Authority of Interpreting all their own Acts, whether the same regard all or some particular persons, upon all occasions: But if Necessity requires, the Good of the Government is to be preferred before all Priviledges and Laws whatsoever. Lastly, Succeeding Princes are tied to the observance of no other Acts depending upon the Authority of their Predecessors, than those whereby the Government and publick Peace is maintained.

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C A S E XVIII.

*Whether it be lawful and advisable for a Prince under any Pretence whatsoever to Marry his Brother's Wife.*

**V**Vhen Henry VIII. King of England came to the Crown, one of the first things debated in his Council was, Whether it were not advisable for him to marry as soon as might be,  
G and



and who the Person was that was the most proper Match for him? There were many Proposals made about that Matter, some being for his matching with some *French* Princess, but others opposed this, and these were their

### *Opinions.*

1. That the same Reasons which made his wife Father match with *Spain*, first by marrying his eldest Son *Arthur* to *Catharine* Daughter of *Ferdinand* King of *Arragon*; and, after *Arthur's* Death, by treating of a Match between the said Princess and himself, were still in force.

2. That his Pretensions being on *France*, no Alliance could be useful on that side.

3. That betwixt great Governments near adjoining, some Jealousies use to rise; that they may sometimes make Peace, but never Friendship; that Leagues and Confederacies have in them the Nature of harmonical Accords, which jar in the second but agree in the third Interval: Therefore he should match with *Spain*, or at least some Prince that might join with him, when there should be occasion to oppose *France*, which, since the late Union of the Dukedom of *Bretagne*, he was to consider as a potent and dangerous Neighbour.

4. As for the House of *Burgundy* and the *Low-Countries*, which was fallen into the hands of *Maximilian* the Emperor, by his matching with *Mary* Daughter and Heiress to the deceased Duke *Charles* the Bold, he had occasion to fear nothing that way, unless he would wilfully provoke them; the Causes of Friendship on that part seeming to be perpetual, as being founded upon the mutual necessity of their Ports and Havens, which upon all foul Weather, their Shipping must resort to on either

ther side, and lately again confirmed by a new Contract of *Charles* Grand-child and Heir to *Maximilian*, with *Mary* the King's Sister [which yet held not.]

5. Again they also urged the expediting of the Match with the Lady *Catharine*, alledging that the Treaty had not only been dispensed with in the Reign of the King's Father; but also that King *Ferdinand* the Princess's Father seemed to be offended because it was deferred so long, neither was it Prudence to disoblige so potent a Prince and good an Ally.

6. Nothing could be reasonably objected against this Match, since the Law in *Deuteronomy* 25. concerning marrying a Brother's Wife, made clearly for it; and especially since the Princess herself protested she was a Virgin and offered to be tried by Matrons.

7. It was farther added, that the Lady was present, which would save Time and Charges, besides she had given such Proofs of her Vertue and Sweetness of Temper, that they knew not where to parallel her.

8. Lastly, They ought to consider, that if she was to depart the Kingdom a great Dowry must follow her, which must yearly be transferred into another Country, to the prejudice and detriment of our own Nation.

*Resolution.*

The King therefore weighing the Arguments, and having obtained a Dispensation for the Marrying of the Princess *Catharine*, his Brother's Widow, the same was consummated accordingly, *June* 3. 1509.

*Event.*

After they had lived near twenty Years together as Man and Wife and had had several Children, whereof only the Princess *Mary* (afterwards Queen of *England*) survived, the King grew scrupulous in Conscience concerning the Lawfulness of that Match, and, after having obtained the Opinions of most of the Universities in *Europe*, that he ought not to marry his Brother's Wife, he not only sued and obtained a Divorce from her from his own Archbishop, but the Pope's delaying and final refusing of it, introduced the Rejection of the Supremacy of the See of *Rome* in *England*, and made way for that glorious Reformation, which afterwards ensued, from the gross Errors and Abuses of that apostate Church.

*Judgment.*

There are few or no other Instances of a Prince marrying his Brother's Relict to be found in any Christian Country, and this seems to have proceeded more out of a covetous Humour in the King's Councillors, who 'tis like had been so to his Father, and were leavened with his Distemper, than any other just Motives whatsoever; but however we see the Unlawfulness of Actions have many times the best Events, as it hapned in this very Case, tho' it must by no means be allowed to give Countenance to the same. It's certain that the desire of Issue-Male seemed to be one of the greatest Motives the King had (how muchsoever he alleged Conscience in the Matter) to get a Divorce; but tho' he obtained his desire herein and was succeeded in his Dominions by his Son and two Daughters



ters successively, according to the Purport of his Will, yet the Intentions of Perpetuating his Line utterly failed, by their dying all three without issue, and the Crown's devolving upon another Family. Indeed the nighest Case to this, of any I know of, was the present King of *Portugal's* marrying his Brother Don *Alphonso's* Wife, by a Popish Dispensation also, tho' under a specious Pretence of *Alphonso's* Impotency; and their Intentions, no doubt, was to have Issue to inherit; but the Event was not unlike what hapned in King *Henry's* Case, for they had only one Daughter, and she died unmarried.

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C A S E XIX.

*Whether it be always convenient in a Government to accuse and punish the guilty, tho' grievous Offenders?*

**A** *Aristides*, being to fight the Battel against *Mar-donius*, which is so much celebrated in ancient History, was informed that some of the Nobles and Men in Authority had consulted about revolting from him; which when *Aristides* came to be fully satisfied of, it was proposed in the Senate, what ought to be done and agreed on against them?

*Opinions.*

Some were very eager for prosecuting the Accusation and inflicting Punishment upon them: For what could be more dangerous than Treachery and a Revolt? for the more hainous the Crime was and greater the Danger, so much the heavier should

the Punishment be: the greater the Example of the Crime is to all, so much the less should the Punishment be omitted in respect to every Person in particular.

Others on the contrary, thought they might be restrained in their Designs by other Methods than punishing of them, and their Endeavours to revolt fully prevented; for such was the circumstance of time and state of things, that no person ought to be exasperated, none easily accused, lest they really effected what they had projected, for fear of being accused and receiving condign Punishment for the same; that all Punishment in a Government should be levell'd against and actually inflicted on the guilty; but in case the Government by the infliction of Punishment be injured, and it self as it were punished, the same ought rather to be declined.

#### *Resolution.*

The majority of Voices carried it, that they should make it plainly appear, that the Conspiracy was really discovered, and yet not take notice of the Persons who had manifestly projected a Revolt, and were conscious of the Conspiracy; who being under a Consternation for fear of the thing, and yet in the mean while not exasperated with any Punishment inflicted on them, would give their Design over, which, since it was discovered, they could not now conveniently execute, neither did they find themselves now under any necessity of putting it in execution, seeing the Accusation and Punishment were laid aside.

*Event.*

*Event:*

There were eight of the Conspirators seized and thrown into Prison, but next Day they were set at liberty again, as if they had been innocent; *Aristides* pretended the reason of their being set at liberty was, because they had not found any cause of accusation and punishment in them; adding withal, that the Matter was to be tried by the Bravery or Cowardize they shewed in the next Battel, and hoped that their Reputations would be vindicated from the rash Suspicion had of them: And thus the Debate about their Revolting being laid aside, they were all kept within the Bounds of their Duty, and fought valiantly against the Enemy.

*Judgment.*

It's better for a Government to know more than it does execute, and frequently to provide against the breaking out of an ill Design, than after the same is executed or projected, to inflict the Punishment due on it: It's many times better to seem as if you had found a thing, than really to do so: He commonly puts a stop to the projected Machinations of others, who appears as if he knew them, but believes them not; as if he knew them, that the Conspirators might desist in their prosecution of them; and as if he believed them not, lest the fear of Punishment should make them desperate and execute the same: It's therefore very dangerous to discourage Accusers, but 'tis sometimes more dangerous and creates Mischief to give way to them against all sorts of Persons and at all Times: for there are some whom the fear of being accused and punished keeps down, and they may



*Of the Constituting an extraordinary Magistrate*  
rather seem to be termed Enemies to the Commonwealth than Guilty.

## C A S E XX.

*Whether, upon an extraordinary Occasion, an extraordinary Magistrate ought to be constituted, even contrary to the known Laws and Privileges of a Government, when the ordinary and usual Method of Government is not sufficient or obstructed.*

**V**hen that renowned General, *Alexander Farnese* Duke of *Parma* and *Placentia*, laid Siege to *Antwerp*, and that it was a Custom in the City, when divers things came to be considered for the Benefit of the Publick, that not only the chief Magistrates, but also the inferiour Burghers and Citizens, commonly called *Gilds*, were called to consult about them, it was debated divers times, Whether an extraordinary Magistrate, who should be invested with the chief Authority, ought not to be constituted by them, and whose principal Business it should be to take care of the Siege and defend the Place?

### *Opinions:*

Some, especially those that appear'd for the meaner Citizens, opposed it and said it ought not to be done; Because,

1. The People ought to have their Privileges inviolably maintained; and when were those things that conduced to their Liberty the more to be exercised than in the time when their Liberty was sought after and in danger of being lost.

2. Those

2. Those things which concerned the Safety and Welfare of all, could better be weigh'd and decided by the Counsels of all; and if for no other reason, yet at least for the publick Tranquillity, which now was in a very special manner to be regarded, when the Enemy was at the Door; and that now Orders made by the whole Community were executed without Tumults, which would easily arise, when the Counsels of a few would be either suspected or not approved of by many thro' Envy.

3. That the Power of the People consisted in the use of their Priviledges, which were by that means best preserved, and which, if once laid aside, especially in arduous Affairs, they would sometimes be refused and so not be valued as before.

Others in the mean time opposed these Arguments and spoke up for an extraordinary Magistrate, alledging,

1. That Priviledges imposed neither a Perpetuity nor a Necessity upon them, but only then when in the use of them the good hoped for might be reaped thereby: for that is a Priviledge, not whereby you are compelled to do a thing, (for this favours more of Force than Favour) but whereby you have a power to do somewhat when 'tis convenient and not otherwise.

2. That the Priviledges granted by Princes, whereby all are impowered to give their Advice in Matters that relate to the good of the Publick, have chiefly a regard to those things that will bear long Consultations and a certain Series of Counsels: But now they were to take Counsel forthwith against those things they expected not, and which the Enemy was transacting against them. That those Persons succeeded always best against their Enemies, who in the execution of their Affairs considered rather the necessity they lay under, than those

*Of the Constituting an extraordinary Magistrate*

those things, which as they were convenient for other Occasions, so were not appointed to be used against Enemies.

3. If all of them must come together and consult, they would lose both Time and Opportunity, which was the Life of Business.

4. Where all were Counsellors there was less Counsel given and more Directions, which must necessarily be a great and constant prejudice to the Publick.

5. That the Commonalty were affraid and complained without any Grounds of losing their Priviledges; for by the instituting of this new Magistrate, they would not be taken away, but only wisely deferred for a time.

6. And yet neither did they seem to be deferred or postponed, if they did but chuse a few Persons, and such as were fittest for Business out of all their Orders for the present Management of the Publick Affairs; for so the whole were as it were represented by a few, and were enough for to provide for the Necessities of the Publick.

*Resolution.*

The first Opinion, by reason of the obstinate Adherence of the Commonalty thereunto, did prevail, as being in their imagination most suitable and adapt for the preservation of the Peoples Liberty.

*Event.*

From hence arose not only a Confusion and Perturbation in Mens Minds, but also in the Administration of the Publick Affairs, seeing the Government, which ought to have been in the Hands of one or a few Men, was divided into divers Orders;  
and



and so took in the Commonalty, who were distracted into Parties, Factions and different Counsels: So that nothing could be resolved on and decided in due time amongst them; which Inconveniency brought at length the worst of Misfortune upon them, which was the taking of the City.

*Judgment.*

The last Opinion was undoubtedly more suitable to the present Necessity of the Place; Publick Priviledges ought to be esteemed as if they were not in being, when, upon the Change of the Circumstances of Times and Things, they may do more hurt than good; and therefore to use them constantly and without intermission, does not favour so much of Prudence as Obstinacy: All things are to be suited to Times and Things. If you constantly observe the old Methods of Government upon extraordinary Occasions, and when Matters do not suit, this will be found not to be Order but Confusion in Government: And therefore as the *Romans* were great lovers of Liberty, so they now and then dispensed pretty much therewith in order to the Conservation of it: In difficult Times they created an extraordinary Officer, called a Dictator, who had the sole Authority vested in him, and who, being so empowered, used that Time for the Benefit of the Government which would otherwise have been spent in vain amidst the Altercations and Janglings of divers Managers.

## C A S E XXI.

*Whether a deposed Prince, flying into another Prince's Country with assurance of Protection, yet there conspiring against his Person or Government, can be justly punish'd according to the Laws of that Country?*

**M**ary Queen of Scots, being forced to resign up the Crown of Scotland, she being a Roman Catholick, in favour of her Son King James then an Infant, but brought up in the Protestant Religion, she retires into England for Refuge, where she was detained many Years under an honourable Confinement; but the Government finding from time to time she corresponded with Queen Elizabeth's Enemies, and was concerned in several Designs against her, particularly in one about the Year 1586. with divers English Priests and others to take away her Life, for which several of them suffered condign Punishment; it was at length proposed in Council what should be done with the Queen of Scots? If tryed, how? and if condemned, the Arguments used *pro* and *con* on divers Occasions and by different Parties why she should or should not be Executed.

*Opinions.*

Some thought that no new and rigorous Course was to be taken with her, but only that she was to be committed to closer Custody; both because she was not the Author of the Conspiracy, but only accessory thereunto, as also because she was sickly and not likely to live long. Others

Others opposed this; and said; that for the security and preservation of Religion, she was forthwith to be put to Death, and that by Law.

One was of Opinion that she should be rather dispatched by Poison, but this was rejected as wicked and unwarantable.

Then they differed by what Law she should be proceeded against.

Some were for the Statute of 25 of *Edward III.* whereby he was made guilty of Treason, who should compass or imagine the Destruction of the King or Queen, raise War in his or her Kingdom or adhere to his Enemies.

Others were for an Act newly made in the 27th of Queen *Elizabeth's* Reign, which they carried, and got a Commission drawn accordingly for it, by vertue of which she was tryed at *Fotheringhay* Castle in *Northamptonshire*, and sometime after Sentenced in the Star-Chamber at *Westminster* to be guilty of the Crimes laid to her Charge, which was approved by the *States* of the Realm assembled in Parliament, who in their Petition to the Queen gave their Reasons for the Publication of her Sentence according to Law; alleading,

1. That their Religion, the Queens Person, and the Kingdom were in danger, by reason of the Survivance of the Queen of *Scots*, who had been bred up in the Popish Religion, and a sworn Confederate in the Holy League, made for the extirpation of the Protestant Religion.

2. That she had now for a long time arrogated the Kingdom unto her self, while the Queen was living, whom, as being excommunicate, she held lawful to do mischief to, as far as lay in her Power, and a meritorious Act to take away her Life.

3. That



*A deposed Prince to be punished.*

3. That she had been a means of overthrowing and ruining divers flourishing Families in the Kingdom.

4. That to spare her therefore was nothing else than to spill the Peoples Blood, who would take all impunity in this Case very much to Heart, and they would not think themselves discharg'd of their Oath of Association unless she were punish'd according to her Deserts.

5. Lastly, they desir'd her to remember, how fearful the Examples of Gods Vengeance were upon King *Saul* for sparing *Agag*, and upon King *Ahab* for sparing the Life of *Benhadad*.

The Queens Answer in substance was; that she heartily acknowledged the Constancy and increase of the Peoples Affections to her, as a singular effect of the divine Goodness, professed her readiness to serve the Nation even with her Death, if it would prove of benefit to it, recited the Queen of *Scots* ingratitude towards her, appear'd uneasy under the Apprehensions of being obliged to resolve upon her Punishment, and hoped there was no present resolution expected from her in a matter of so great Moment and Consequence, and desired they might find out some other Expedient.

The Answer being not satisfactory, they replied saying, that the Queen's safety could be no ways secured as long as the Queen of *Scots* lived, unless she should either seriously repent and acknowledge her Offence, or were kept with a closer and stricter Guard, and sufficient security given by Bond and Oath for her good Behaviour, or Hostages delivered, or depart the Realm.

1. As to her Repentance, they were out of all hopes of it, considering she so ill requited the Queen who had saved her Life, and would not yet acknowledge her Fault.

2. As

2. As for a stricter Guard, Bonds, Oath and Hostages, they looked upon them as nothing, for if the Queen were once cut off, all these would presently vanish.

3. And if she should depart the Realm, they were affraid lest she should presently take up Arms and invade the same.

Lastly, that it were unjustice to deny the Execution of the Law to any one of her Subjects, that should demand it, so much the more to the whole Body of the People of *England*, who unanimously and with one voice humbly and instantly sued for the same. But notwithstanding the Queens reluctance to comply, yet the Sentence was proclaimed, which occasioned farther speculations upon her Case and now divided Men into

### *Different Opinions.*

1. Some did alleadge in her Favour, that she had hard measure in regard she was a free and absolute Princess, and had no superior but God alone.

2. That she was the Queen's very near Kinswoman, who had made her a large promise by a particular Messenger on the word of a Prince, of all Civil Usage and Hospitality, as soon as she was arrived in *England*, being expelled her Kingdom by rebellious Subjects, but on the contrary she had kept her still in Prison, and violated the sacred Rights of Hospitality; that she could be esteemed no other than a Prisoner of War, and it was always lawful for such to endeavour to obtain Liberty and Deliverance.

3. That she could not commit Treason, because she was no Subject, for *Par in parem non habet Potestatem*, viz. Princes of equal degree, had no Power or Sovereignty over one another, and for that reason  
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the Emperor's Sentence against *Robert King of Sicily* was difannulled, because he was no Subject of the Empire: That Embassadors who were Princes Servants, if they conspired against those Kings to whom they were sent in Embassy, were not to be charged as guilty of Treason, much less Princes themselves.

4. That the Purpose or Intention was not to be punish'd unless the Effect followed.

5. That it was a thing never heard of, that a Prince should be subjected to the Stroke of an Executioner.

6. Moreover, That she was condemned contrary to the Law of God, the Civil Law of the *Romans*, and the Common Law of *England*, yea, contrary to the first Act of Parliament made in the Thirteenth of the Queen's Reign, whereby it was enacted, That no Man was to be arraigned for intending the destruction of his Prince's Life, but by the Oath and Testimony of two lawful Witnesses, to be produced Face to Face before him, whereas in this Case no Witness was produced; but she was overborn with the Testimony of her Secretaries, who yet were absent from the Trial; and surely upon this and the like Occasions that excellent Saying of the Emperor *Adrian* should be much regarded, *That Witnesses, not Witnessing, were not to be believed.*

7. That she had many Enemies about the Queen's Person, who had imploy'd Spies and Emisaries to circumvent her with crafty Diffimulation, counterfeit Letters and the like Practices, which would work strongly upon a silly Woman desirous of Liberty, and make her entertain Thoughts and Designs, which otherwise would never have entred into her Head.

Others



Others entertained quite contrary Sentiments of her Case, and did alledge,

1. That she was not a free and absolute Queen, but a titular one only, because she had resigned her Kingdom.

2. That when she first came into *England*, she had put herself under the Protection of the Queen of *England*; after which, as by demeaning herself well, she enjoy'd the Benefit of the Laws, so by her Misdemeanors she was subject to the Equity and Justice thereof, according to that Maxime of the Lawyers, *He deserves not the Benefit of the Law who offends against the Law*; otherwise a foreign Prince's Condition, if he was to do what he pleas'd in another Prince's Dominion, would be much better than his that reigned never so well.

3. They reputed her to be a Subject, tho' not originally so, yet, *pro tempore*, because two absolute Princes, with equal Authority, could not be in the Kingdom at one time; and that it was a received Opinion of the Learned in the Law, *That a King out of his own Dominions (except it were upon a Warlike Expedition) was but a Private Person, and therefore could neither confer Honours nor exercise any Royalty*: And farther, *That the Queen of Scots, by her Misdemeanors, had lost Merum Imperium, her absolute and just Power and Sovereignty, and that such as were Subjects by their Abode only and Place of Habitation, might commit Treason*.

4. As for her Kindred, there was none nearer nor dearer to us than our Country, that being to us as another God, and our first and greatest Parent; and for the promised Offices of Civility and Hospitality, they could not privilege her to do Mischief afterwards with Impunity: But those Promises were to be understood, things continuing in

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the same state and not altered ; he that shall afterwards commit a Crime deserves not to enjoy the Security which before was promised him ; the Laws of Hospitality were indeed Sacred, but the Laws of our Country more Sacred ; that Princes, as well as the Pope, did never bind up their own Hands, and all Men were more strongly tied and engaged to the Common-wealth than to their own Promises.

5. As for what was alledged by the contrary Party, in respect to her being dealt with as a Prisoner of War, it was answered, That only such Prisoners of War were to be spared, of whom we needed not to fear any disturbance of the Peace, others not ; and that a Prince had Power and Jurisdiction over another Prince that was his Equal, whenever that other Prince made himself Subject to the Judgment of his Equal, either by express Words, private Contract, or by trespassing within the Jurisdiction of his Equal : That the Pope repealed the Emperor's Sentence against *Robert King of Sicily*, because the Fact was not committed within the Emperor's, but the Pope's Territories ; That Embassadors were by the Law of Nations privileged, in respect of the Necessity of their Embassies, to be free from Violence, but so were not Kings that should attempt to do mischief and disturb another Prince's Dominions.

7. That many Kings had been condemned and put to death, particularly *Rescuporis King of Thrace* by *Tiberius*, *Licinius* and *Maximianus* by *Constantine the Great*, *Bernard of Italy*, *Conradine of Sicily*, &c. and in short, that the Safety of the People was the highest Law, and no Law more sacred than the Safety of the Common-wealth ; That God himself had given and ordained it ; that things which were for the Good and Benefit of the Government

ment were to be accounted lawful; yea, that the very Bishops of *Rome*, not so much for the Publick as their own Safety, had put several Ecclesiastical Persons to death, as *Boniface* caused *Cælestine* the Fifth, after his being deposed from the Papacy, to be put to death, fearing lest for his singular Piety he should be re-instated again in the Papal Chair, and thrown into the Sea, whilst he beheaded others, and caused the Bodies of two to be dried in an Oven and carried about upon Mules for a Terror to others.

8. Again, That her Secretaries were not to be esteemed Servants, and that domestick Evidences were to be allowed of concerning those things that were done privately and secretly at home.

9. That it was a meer Nicety to doubt whether those Accusers that were voluntarily sworn and themselves accessory to the Crime were to be brought Face to Face to maintain their Accusation in Criminal Cases; and in short, that there was no great and notable Example extant, which did not carry some colour and appearance of Injustice with it.

Besides the fore-mentioned Allegations on both sides, there were other Arguments and Reasons produced in the Queen's Case that were very particular, and more especially those propounded to Queen *Elizabeth* by the *French* Embassador according to his Master's Orders, and the Answer to them, which were to this effect:

1. That it very much concerned the most Christian King of *France* and all other Kings, that a free and absolute Princess should not be put to death.

2. That the Queen's Safety would be more endangered by the Death of the Queen of *Scots* than it would be by her Life; that if she were delivered



red out of Prison, she could probably attempt nothing against the Queen, she being now in a sickly condition, and having but a short time to live.

3. That tho' she had laid claim to the Crown of *England*, she was not to be blamed for it, but it was wholly to be imputed to her young and tender Years and to bad Councillors.

4. That she came at first a Supplicant to *England*, and therefore, having been unjustly detained, she was now at length either to be ransomed or mercifully dealt withal: Moreover, That an absolute Prince was not to be called in question, which made Tully say, *So unusual a thing it is for a King to be put to death for any Crime, that before now it was never so much as heard of.*

5. That if she were innocent she was not to be punished; if guilty she was to be spared; for this would turn to far greater Honour and Advantage, and would be eternally recorded as an Example of *English Clemency*: That the Story of *Porcenna* was to be remembered in this Case, who snatched the right Hand of *Mutius Scevola* out of the Fire, and set him at liberty, tho' he had conspired his Death.

6. That it was a principal Rule and Precept of good Government, to be sparing of Blood; that to use the Extremity of Rigour to her, could not but seem a cruel and bloody part; that the *French King* would do his best to repel and frustrate the Attempts of all Men whatever who should offer Violence to the Queen; and that the *Guises*, the Queen of *Scots* near Kinsmen, would engage themselves to do the like by Oath and Covenant under their Hands, who, in case she should be put to death, would take it very hainously, and perhaps not leave her Death unreveng'd.

7. Lastly, they desired she might not be proceeded against according to so rigorous and extraordinary

ordinary a Sentence, otherwise the *French King* could not but be highly displeased therewith, let other Princes resent it as they pleased.

To these Arguments there was a reply made in the following Heads.

1. That the Queen of *England* trusted the most Christian King of *France*, would have no less regard and respect for her, than he had for the Queen of *Scots*, who had contrived the destruction of an innocent Princess, her near Kinswoman, and a Confederate of the *French King*; that it was expedient and necessary for King's and Commonwealths, that wicked Attempts, especially against Princes, should not go unpunished.

2. That the *English*, who only acknowledged the Sovereignty of Queen *Elizabeth* in *England*, could not acknowledge two supream, free and absolute Princes in the Kingdom at one time, or account any other whatever equal to her in *England* as long as she lived; neither indeed, did they see how the Queen of *Scots*, and her Son who now reigned, could be reputed both at one time supream and absolute Princes.

3. Whether the Queen's safety would be exposed to greater danger upon her being executed, depended upon future Accidents and Contingencies; the Estates of *England* upon serious deliberation thought otherwise: There would never be occasions wanting for bad Attempts, especially the matter was now come to that pass, that the one had no hopes of safety unless the other were ruined; and they might call to mind this saying, *Aut ego illam, aut illa me*, either I must take away her Life, or she will take away mine; the shorter the time to come of her Life was, the sooner and more eagerly would the Conspirators hasten the Queen's Danger.

*A deposed Prince to be punished*

4. That the Title which she claimed to the Crown of *England* she would not yet renounce, and therefore there was good reason for detaining her in Prison, and in such a manner (tho' she came a suppliant into *England*) till she had renounced the same; and the Crimes she had committed since she was a Prisoner she ought to suffer for, whatever the Cause was, for which she was first committed to Custody.

5. That the Queen had formerly most graciously spared her Life, when by unanimous consent of Parliament, she was condemned for a Rebellion raised about an intended Marriage between her and the Duke of *Norfolk*; and to spare her again were but unadvised and cruel Pity; that no Man was ignorant of that saying of the Lawyers; A Man offending in anothers Territory, and there found, is punish'd in the place of his Offence, without any regard to his Dignity, Honour or Privilege; and that this was both justifiable by the Laws of *England*, and by the Examples of *Licinius*, *Robert King of Sicily*, *Bernard King of Italy*, *Conradine*, *Elizabeth Queen of Hungary*, *Joan Queen of Naples* and *Dejotarus*, for whom *Tully*, pleading said, 'It was no unjust thing that a King should be found Guilty and put to Death, tho' it was not usual; these being his Words. Which I speak, first concerning a King's forfeiture of Life and Dominions, which thing tho' it be not unjust, especially when thy life is in danger from him, yet it is so unusual, &c.

6. That she ought to be punish'd, having been found guilty upon a just and legal Tryal; considering that what was just, was honest, and what was honest was also profitable and expedient.

7. That the Story of *Porfenna* suited not with the present Case, unless a Man should imagine a  
numerous



numerous combination of Men, to have laid wait for the Queens Life, and should thereupon persuade her to set the Queen of Scots at Liberty without any hurt, for fear of them, and with some regard to her own Honour, but none to her safety, as *Porfenna* discharg'd *Mutius*, after he had affirmed, that three hundred more with him had conspired and vowed to murder him. Moreover, *Mutius* attempted this against *Porfenna* in a just and open War, and when *Mutius* was let go, *Porfenna* did verily believe the danger was over, but the Case here was quite otherwise.

8. That Blood indeed was to be spared, but it must be innocent Blood; this God had commanded: It was indeed true, that the Voice of innocent Blood cried out for Blood; and this *France*, both before and since the Massacre at *Paris*, could well witness and testifie.

9. That Death that was justly inflicted could not seem bloody, as Physick duly prepared ought not and is not esteemed violent.

10. That however the *Guises*, the Queen of Scots Kinsmen, might resent the matter, yet it highly concerned the Queen to regard rather her own, the Nobility and People of *England's* Safety (upon whose Love and Affection she wholly relied) than the Displeasure of any Persons whatsoever; that the Matter was come to that pass, that what was said of old concerning those two Princes, *Conradine* of *Sicily* and *Charles* of *Anjou*, might now be applied to the two Queens, and that as truly too; viz. That the Death of Mary was the Life of Elizabeth, and the Life of Mary the Death of Elizabeth.

11. That the French King or the *Guises* Promises could not secure the Queen and Kingdom, much less make satisfaction for her Life, in case she should be cut off.

12. That the *French* King could neither discover nor prevent secret Conspiracies against himself at home, much more unlikely was he to hinder those against the Queen of *England*; for Treason was secretly hatched, and therefore hard to be prevented: If the Fact were once committed, what would it signify to claim their Promises? How should an incomparable Princess's Death be made amends for? And in so sad and woful a Confusion of Things, what Remedy could be found for the languishing Government?

13. That the Obligations and Oaths of the *Guises* signified little, who judged it meritorious to kill the Bishop of *Rome's* Adversaries, and could very easily procure Dispensations for their Oaths; And what *English-men*, if Queen *Elizabeth* were murdered, and the Queen of *Scots* of the House of *Guise* advanced to the Throne, durst accuse them of the Murder? And if any should accuse them, could they thereby make her alive again?

14. The Embassadors, in calling this a rigorous and extraordinary Sentence, had spoken rashly and unadvisedly, (since they had neither seen any of the Proceedings nor Evidences) and had more sharply than became them blamed the States of the Kingdom, who were known to be Men distinguished for their Nobility, Vertue, Prudence and Piety; nay, they had very inconsiderately uttered such Words in the *French* King's Name, as if they intended by them to terrifie the Queen and Parliament; *English-men* were not wont to be frightened by *French-mens* Threats from taking such Courses as might secure their own Tranquillity; when they in the mean time could direct them to no proper Method, whereby they might divert the Dangers that so nearly threatned them.

But

But notwithstanding these things the Queen still hesitated in her Mind what she should do with the Queen of *Scots*, and could come to no fixed Resolution concerning her: For on the one side,

1. Her own innate Clemency pleaded for her, lest she should seem to shew herself cruel to a Woman, and that a Princess and her Kinswoman too.

2. Fear of Infamy with Posterity in after Histories, and imminent and certain Dangers, as well from the King of *Scots*, who would now be advanced a step higher in his hopes of the Crown of *England*, as also from the Roman Catholick Princes and other desperate Men, who would now venture upon any thing.

But, on the other hand,

1. It was evident, if she spared her, she foresaw no less danger threatned her.

2. That the Nobility who had past Sentence upon her, would endeavour under-hand to get into favour with her and her Son, not without manifest danger to herself.

3. That the rest of her Subjects, who had been so careful of her safety, seeing she had frustrated their Care and Pains, would take it very ill, and neglect her preservation for the time to come.

4. Many would turn Papists, and entertain greater hopes, when they should see her preserved, as it were by Fate, to a probability of enjoying the Crown; the Jesuits and Seminaries, whose Eyes were only upon her, seeing her sickly and fearing lest she should not live long, would leave no Means untried to hasten Queen *Elizabeth's* Death, that so their Religion might be restored again in *England*.

But besides these Arguments she was continually prest with these that follow by her Councillors,  
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which did at length determine her Mind to what ensued: They urged,

1. Why should she spare her, when she was guilty and justly condemned, who tho' she subscribed the Association for her safety, yet presently afterwards resolved unmercifully to ruine her, who was altogether innocent, and by her destruction to destroy Religion, the Nobility and People? Clemency was a Royal Vertue, but not to be extended to the merciless; and a vain shew of Mercy should give way to wholesome Severity: It was Commendation enough for her Clemency, to have spared her once; to spare again, were nothing else but to pronounce her guiltless, condemn the Estates of the Realm of Injustice, encourage her Favourers to hasten their wicked Designs, and discourage her faithful Subjects from caring for the Commonwealth.

2. Religion, the Government, her own Safety, Oath of Association, and Care of Posterity, did all with their conjoynt Prayers, beseech her, that she which endangered the subversion of all these, might forthwith be put to death, and except they could prevail, Safety it self could never be able to preserve the Government, and Historians would leave it upon record to future Ages, That the bright Sun-shining and glorious Days of *England*, under Queen *Elizabeth*, ended in an eternal Night.

3. Posterity would blame them for want of Wisdom, who could foresee these Mischiefs, (which added to the Misery thereof) and yet could not prevent them, and would impute the Mass and Heap of Calamities that ensued, not so much to the Adversaries Malice as to the gross Carelessness of those Times.

4. That the Life of one *Scottish* and Titular Queen ought not to outballance the Safety of all *England*.

5. That

5. That in so important a Matter they ought not to interpose Delays, since that brought Danger, nor allow any Space of Time for Plotters to do Mischief, who would now, as their last Refuge, have recourse to bold Attempts, since, besides Impunity, they would be in hopes of being rewarded for their Pains; he that did not that which lay in his Power for the avoiding of Dangers, did rather tempt God than trust in him.

6. That the Mischiefs, which threatned them from Foreigners, when the Cause was taken away, would also be removed; neither could they do *England* any harm but by her; and what Inclination or Power soever the Pope had to injure them, it would all fall to the Ground with her: As for the *Spaniard* he could have no just cause to be offended, who for his own Security put to Death his own Son, *Don Carlos*, and now, for ambitious ends, lay in wait for *Don Antonio* of *Portugal*; and for the *French King*, he most religiously maintained Amity with *England*, and it highly concerned him; that by the timely Death of the Queen of *Scots*, the Hopes of the *Guisians* should be quashed, who, presuming upon the expected future Power of their Kinswoman, did at present insolently insult over the King.

7. That for the King of *Scots*, he might indeed, thro' the force of natural Affection, and with respect to his Honour, be deeply concerned for his Mother; but his Wisdom would rather lead him to an Expectation of Things coming forward of themselves, leisurely and with safety, than to be over-hasty to bring them about with Danger. And the nearer he was to the height of his Hopes, the farther would foreign Princes be from assisting him; it being a thing usual with them to endeavour to hinder the growing greatness of another.

8. That

8. That there were no need for them to go for Examples abroad to excite the Queen to this prudent and just Act, seeing their own Historians furnish'd them with a sufficient number; and they desired her Majesty to consider, how *Henry the First* carried it towards his elder Brother *Robert*; *Edward the Third*, or rather his Mother, towards *Edward the Second*; *Henry the Fourth* towards *Richard the Second*; *Edward the Fourth* towards *Henry the Sixth* and his Son the Prince of *Wales*, and towards his own Brother *George Duke of Clarence*; *Henry the Seventh* towards the Earl of *Warwick*, the Duke of *Clarence* his Son; and her Father *Henry the Eighth* towards *de la Poole Earl of Suffolk*, *Margaret Countess of Salisbury*, and *Courtenay Marquess of Exeter*, all which were for light Offences, in comparison of their Faults to those of the Queen of *Scots*, cut off.

#### *Resolution.*

The Queen at length, having weigh'd all Matters seriously, and whatever had been said unto her on all Hands, as well as what her own Mind suggested to her, resolved to seal a Warrant for the Execution of the Queen of *Scots*, which was done accordingly on the Eighth of *February*, 1587. at *Fotheringhay-Castle* in *Northamptonshire*.

#### *Event.*

The Queen's Person was more secure ever after during the remainder of her Reign, less Plots and Conspiracies being formed against her, the Protestant Religion was better established and secured, and Mens Minds less disturbed and amused with Feats and Apprehensions of future Dangers and detri-



detriment to their Religion and Property: Neither did foreign Princes, when the Stroke was once given, much concern themselves about the Matter, only King *James*, her Son, pretended to Bluster a little, by refusing the *English* Embassador entrance into *Scotland*, and shewing some other insignificant Resentments, for he had neither Power to injure *England*, and the Queen had Artifice and Strength enough to bring him quickly to acquiesce with what was done; the fault of which she threw upon poor *Davison* her Secretary, who was fined in the Star-Chamber for it.

### Judgment.

It's very true, that Princes in Point of Jurisdiction are equal, and one crowned Head has no Power over another by way of Right, tho' he may be much more potent in respect to extent of Dominion and Strength; but Princes deprived are no Princes, since they have no Subjects to govern and to obey them; for there is no Relate without a Correlate, no Father without a Child, or Shepherd without a Flock; and so the Queen of *Scots* could be no Sovereign Princess at that time; and tho' a Foreigner in respect to *England*, she must needs know there was local Obedience due to the Princess in whose Territories she resided and of whom she received Protection: However, 'tis the first Example in *England* of the cutting off a crowned Head by judicial Process, tho' not the last, and perhaps another Prince of less resolution than Queen *Elizabeth*, would, under the same Circumstances, hardly have adventured to do it; to which *Seize Cinq*, (as the Queen used to call him) otherwise *Sextus Quintus*, that crafty but great Pope, bore ample Testimony, when, upon the News of  
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the Queen of Scots Death, he broke forth into an astonishing Exclamation to this purpose, *O Beata Regina, &c. O happy Queen who durst exert so much Resolution and adventure upon so bold and daring an Action as to cut off a crowned Head.* His Fingers, it seems, itching after an Opportunity to do the like himself.

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## C A S E XXII.

*Where Controversies do arise between the Subjects of different Governments, which affect the Peace and Tranquillity of the Publick, when and how is the Publick Interest to be preferred before that of Private Persons?*

**W**Hen the *English* and *Dutch East-India* Companies were erected by publick Authority in either Nation, but the Trade carried on and respective Settlements made at the Charge of private Persons, and that both Sides offered Injuries to one another, they began to make their Complaints on both Sides of the Wrong sustained by them: Now the Matter to be inquired into upon this Occasion was, Whether in taking Cognizance of this Affair, the Complaints of each particular Person, that seemed to have been injured, ought to be heard and the Loss sustained by him particularly considered.

### *Opinions.*

1. Some insisted, that the Magistrates ought, above all things, to take particular Care of the Subject, the main of which consisted in this, That in conformity

formity to the Rules of Equity, private Injuries are no less to be considered than publick ones, especially seeing the Government it self is damnified by the Injuries done particular Persons.

2. That this whole Controversie was a publick and not private one; that Princes and chief Magistrates had the Estates of private Men in their power, by way of Authority in Magistracy, but not absolute Dominion by way of Magistracy; that good Laws may be prescribed to the Subject by publick Authority, not by absolute Dominion; because Princes have not power to give away the Estates of their Subjects: But 'tis a kind of an Alienation to dismiss the Actions of particular Persons against others, and to remit their Punishment or Obligation to make good the Damages they have done unto others, who have injured and wronged them; for this Property every one seems to have in his Goods, that he may commence and carry on a just Suit against another. As for what the Lawyers say, That 'tis less to have an Action than the Thing; this is to be understood of the Suit and not of the Judge, whose part it is to manage, so as he may obtain his own, who can commence a just Action against another; but if private Men be not allowed to sue, their Estates and Properties seem to be taken away from them. But others deny the Argument, saying,

1. That indeed the Care of the Subjects lay on the Magistrates, and they ought to have a due regard to their Poverty and Losses; but as this Care continually makes towards Justice, when the same can be satisfied, so it has not always a regard to the utmost extent of Justice, but so far as others will allow the execution thereof; now the whole of Justice is to be administred when the Controversie lies between the Subjects of the same Government,



ment, but according to necessity, when Controversies do arise between the Subjects of different Nations who also differ in Power.

2. There is even Care to be had of the Subjects not only when Damages sustained are repaired, but where it cannot be done otherwise, when greater Damages are prevented for the future by a transfer of the Government.

3. That it was an Order of the *States* there should be no such continual Janglings between their Subjects and the *English*; for greater Wars and Evils might easily arise from them; why should not they therefore be prevented by a publick Agreement without regarding the Suits of private Persons? Were not all to give their helping Hand for the Support of the Government, and any Injury that might be supposed to be done to particular Persons, was made up by the Benefit that redounded therefrom to the Government.

4. That they did not herein exercise an absolute Dominion but legal Power in respect to the Estates of private Men, lest any Man should make ill use of his own: Why should not they take care now, lest any of them, by pursuing their Actions against others, did abuse the same to the damage of the Government?

5. No other Decision of Complaints, of so long standing, could be expected; but to Jangle only and yet continually, did them no good, but always hurt; and therefore it was better to decide and terminate them by some other way, than none at all; where there is continued Cause of Janglings offered between private Persons and Subjects, it was for the Interest of the *States* to take no Cognizance of their private Suits, which would be an endless Work, but to put a final End to their Controversies: And lastly, where Justice cannot duly pre-

prevail, by reason of the Obstinacy of the Parties, over whom there is no government, the Authority of some publick and mutual Agreement ought to be preferred and to prevail.

*Resolution.*

Thus it was thought most advisable by the King of *Great-Britain* and the *States-General* to terminate the Difference between their Subjects, and the same were terminated accordingly.

*Event.*

There have been few or no Complaints made since on either side, but when, thro' the Accidents and Circumstances of Time, any such Differences have hapned, the said Method of Composing it, has been of some use, and may doubtless be more so for the future.

*Judgment.*

I am of Opinion that a City, whose whole State is good and safe, is of greater Benefit to all private Men, than if every particular Citizen flourished in his private Capacity, whilst the Publick suffered and went to wreck; for he that lives happily in a private Capacity, if his Country be in danger, he must also necessarily share in the common Calamity; but if in the flourishing State of a Government, he does not so well thrive in his own Estate, yet he is in that State of the Government preserved and defended: There are only two Republicks now in *Italy* that are in a very flourishing Condition, *viz. Venice* and *Genoa*, but yet so that the former is much more powerful than the other;

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and the only reason of this Disparity is, because the *Venetians* at all times had a greater regard to the good of the Publick, than of private Persons, while the *Genuese*, on the contrary, every Man minded more his own particular Interest, whilst they left the Government to sink to the lowest ebb of Poverty; from whence the *Venetians* always remained in a most free state, whilst the *Genuese* one while were continually harrazed with the Tyranny and Rapine of domestick Enemies, and, at other times, with those of Neighbours. Seeing therefore a Government may be able to endure the Calamities of private Men, while particular Persons, on the contrary, can by no means sustain the Calamities of the Publick, it's their Business who sit at the Helm always to have a greater regard to the Welfare of the whole Community than any part of it.

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### C A S E XXIII.

*After what manner may Nations, Cities or Governments properly defend themselves against their Princes, who violate the Laws and affect too much Power, without drawing the Envy and Odium of others upon them, and preserve their ancient and just Liberties?*

Soon after the erecting of the Office of *Doges* in the Republick of *Venice*, there were some of them thro' a prevailing Interest they had amongst some of the Senators, who began to be ambitious of greater things, to the diminution of the Republick's Liberty and the advancement of their own Power: Now the Senators, who opposed these Coun-



Counsels and Designs, being brought before the *Doge* and the rest, were, under the pretence of other Crimes laid to their Charge, deprived of Life and Fortune all at once: It came therefore at last to be debated, what Method they ought to take whereby to secure the publick Liberty and also to provide for the Safety of the Senators themselves.

*Opinions.*

Some of them were of opinion, that it was enough for them to carry it with a great, invincible and constant Mind for the Interest of the Commonwealth, against those that opposed it: Against which it was objected, That indeed for them to carry it so, was well, that the same was necessary, but yet that it was not sufficient nor safe enough for them; that it was not safe for them to oppose those, who would raise the *Doge's* Authority above the Liberty of the Republick; for it was already well known by experience, that those who opposed the *Doges* or Princes, were continually hated by them, from whence it was to be feared, that Stiffness and Constancy of Mind which many shewed for the publick Liberty, might easily be subjected; neither would that be of it self enough, seeing the Patrons of Liberty would in process of time dwindle away; neither could so much be expected with certainty from the Constancy of Posterity, as there could from the present Age, the Senators whereof demeaned themselves with Justice and Goodness in managing the Affairs of the Republick: And therefore it was necessary for them in this Case to make some perpetual Constitution or other; somewhat, whereby both the present Age and Posterity might be constantly oblig'd and bound;

*How Subjects are to defend*

somewhat, in short, whereby, without the loss of Life or Fortune, the Liberty of the Republick might be so secured as never to be violated or diminished; and all this consisted in the enacting of some perpetual Law.

*Resolution.*

They agreed to enact two Laws that might be for ever of use to the Common-wealth, and therefore eternally to be observed.

The first Law was, Whoever for the future shall move any thing in or to the Senate, whereby they may seem to lessen or endanger the Liberty of the Republick, and the Authority of the Senate, they shall, according to the greatness of the Crime or Attempt, be either adjudged guilty of Treason, or they and all their Posterity be accounted infamous and unstable.

The second Law was, That whoever did at any time offer any thing to the Senate concerning the repealing of this useful Law, it should always be esteemed a capital Crime in him.

*Event:*

The Decree being from thenceforward made and observed, the publick Liberty remained safe and unviolable; the Senators, who under the Doges transacted the Affairs of the Common-wealth, were no longer in danger; for there was no Motion made ever after against these Laws, seeing there was no Body concerned themselves with increasing the Authority of the Doges, and none to oppose them, from whence the safety of every particular Senator was provided for.

The

The Doge might have been angry with the Law, but not infringe it, tho' in the mean time he could not be angry with the Persons who stood in defence of the Laws.

*Judgment.*

This was a most commendable Method and of perpetual Use, which, had it been practised by some other Governments, the Nobility and People's Liberty had not at this Day been trampled upon by Princes: Princes indeed never want Ambition to increase the Power they are vested in; and therefore a Government ought never to be without a Law, that may serve as a Curb to such injurious Ambition; for they never want Flatterers, who are Enemies to the Liberty of their Country; and therefore they should have no opportunity allowed where, by their Flatteries, they might be enabled to contribute to the advantage of their Princes to the detriment of the Common-wealth: They never ought to be without Assertors of their Liberty, and constant Care ought to be taken never to want them: But they are to be secured by such Laws which are not looked upon to be as much the Laws of such & such Persons who at present take care of the Government, as of the Government it self: All opportunities of doing or proposing any ill thing is to be cut off, especially in the supream Counsel of a Government; for those that are good may so oppose such as are not so, as not to be under a necessity of incurring the Hatred and perfidious Contrivances of the wicked: Finally, 'tis better in a Government to prevent People from offending, than to oppose those that become offenders.



## C A S E XXIV.

*If Princes, States or Cities have mutual Pretensions upon each other, how and after what Method are they to proceed in order to remove their Controversies?*

**F***Lorente V. Earl of Holland*, insisting, that the Prince of *Gelderland* was indebted to him, the Prince on the other hand did at the same time alledge, that the Earl of *Holland* was obliged to give him satisfaction in respect to some particular things he claimed of him: The Pretensions of each of them were just; and therefore the Embassadors of both Princes met in order to adjust them on both sides, and the first thing was that fell under their consideration, Whether of the two Princes Cause ought first to be debated and decided?

*Opinions.*

As they were of different Parties, so they differed in Opinions; for the *Hollanders* stily urged, That their Cause ought to have been examined first, and finally determined, seeing their Prince was greater than that of *Gelderland*, as being a Person who did not so much use the Title of a Prince as that of Guardian; but the Embassadors of *Gelderland* were on the contrary desirous to have their Matters first examined, and Satisfaction made them; for they were affraid, and that not without reason, lest, in case the Pretensions of the Earl of *Holland* were first adjusted, he would make use of the same; and so, having obtained his Ends, would

would either reject the Pretentions of the Prince of Gelderland, or leave them wholly undecided.

*Resolution.*

After many Altercations on both sides, they did at last give full satisfaction to both Parties; for, to the end that both sides might be safe, they unanimously agreed, whether this or the other Cause were first decided, That the same should be of none effect, if afterwards the other Party was not satisfied in his Pretentions, after the same manner and with the same Justice.

*Event.*

Thus it was ordered, That each Party retained still in his own Power the Execution of the Matter first decided by them, or not; so it was managed, that both sides looked upon it to be his own Concerns, to satisfy the others Desire either first or last; for when this Resolution was once concluded on, one could not be satisfied in his Pretentions without the other were so too.

*Judgment.*

That is the best and safest way of acting, in respect to publick Controversies, wherein, when each Party pretends there is something due to him from the other, there is nothing at first absolutely determined in favour of either of them, but that they act according to this Rule and under this Condition, That nothing that has been done or determined before for the other shall be adjudged valid, without the opposite Party have afterwards satisfaction made him in his Pretentions. And thus, when all

things cannot be done or expedited in the same Moment of time, all things ought equally to be conjoined for the good of either Party, according to the Rules of Prudence.

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### C A S E XXV.

*How and why we are to take particular Care, lest Subjects go about to put Laws in Execution, before the same are promulgated by the Magistrate.*

**V**Hen Queen *Elizabeth* in the beginning of her Reign was about to abolish the exercise of the Popish Religion in her Dominions, and so to put out her Royal Proclamation accordingly; this came to be known by the People who were of another Religion, I mean the Protestants, who without waiting for the Publication of the Queen's Pleasure, fell upon and destroy'd the Altars, Images and other Religious Fopperies belonging to the Roman Catholicks and their Churches; hereupon it was debated in the Queen's Council, whether that was to be allowed, conducive to the Interest of the Kingdom, and conform to maxims of State.

#### *Opinions.*

Some were altogether for allowing that Liberty to the People and their Reasons for it were,

1. Because they could not think that to be unlawful, which soon after was to be declared lawful by the Queen's Proclamation, seeing the Queen had it under present deliberation; how she might



might abolish the *Romish* Religion in her Dominions, why therefore should the same now be denied the People?

2. Because the Queen's Command would hereafter be the more easily executed, if the People began now to execute the Contents of her Proclamation, and therefore they could not simply, but even out of prudence connive at the People's pulling down the *Romish* Religion and Interest in the Nation.

But the Queen opposed these Sentiments alledging,

1. First, that nothing could or ought to be esteemed lawful in Matters wherein the Authority of the Magistrate was necessary, unless the same were enjoined and commanded by the Magistrate; for what ever is lawful in a Government, presupposes the enacting of a Prior Law from whence it is denominated; how therefore could this be judged lawful, when there was no Law made for it?

2. The Queen's Command would not more easily, but difficultly be put in execution, if the People were impunedly allowed to anticipate such Command and prescript of the Law, that the common People acted without any discretion, moderation or prudence, whatever came in their Heads; but in Laws, the manner of putting them in execution was warily prescribed, least otherwise the execution of a just Law, should be unjust, hence it might easily be understood, that the Power of enacting Laws would be taken away by the People's being guilty of such irregular Actions, in respect to a Law not yet enacted or put forth.

3. That the Resolutions of the Government, nay their Judgment signified nothing, if the same hapned

happened to be anticipated by the Licentiousness of private Men; when that is done, the common People seem to govern the Magistrates, and not the Magistrates them.

4. Those of the Communion of the Church of Rome, while there was no Law published against them, might oppose the People's Oppressions and Insults, and this they seemed to have a right to do in defence of themselves and their Religion; what therefore could be expected from the Anticipating of the Law than Murders and other Violencies? There was an Obedience to be paid to the Law, and the Subjects usually were modest in respect thereunto, why therefore should they practise the same before the time?

### *Resolution.*

Hereupon there was a Proclamation publish'd to prevent the Insolency and violent Proceedings of the People, and to chastise them with condign Punishment, who had the boldness to take upon them to anticipate the Authority of the Law.

### *Event.*

By this means the Peace and Authority of the Government was maintained.

### *Judgment.*

That thing is unlawful which is done by the Authority of private Men, when there is need of that of the Publick's for it, tho' that be such as shall afterwards by a Law be declared lawful; And seeing the eagerness of the giddy Multitude is swifter and more forward than that of the Laws,

so that the Laws may be easily prevented thereby; the Law to be enacted and the tenor thereof ought to be kept private, untill it be thought fit for execution, and the common People are to know and pursue the force of a Law already publish'd, and not to deliberate concerning it, and the more secret any Government is in its Counsels, the more useful and effectual will their Laws be.

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C A S E XXVI.

*Whether and how a Person that is a Councillor of State ought to answer for the Events of Counsel and Conduct, and be punish'd for them?*

THE *Thebans* being pressed with an heavy War by *Alexander* the Great, the *Arcadians* gave them some aid, by sending some thousands of their Citizens to their Assistance, but *Alexander* not long after, did both overthrow the *Thebans*, and entirely cut off the *Arcadian* Auxillaries: Now it was debated in the publick Assembly of the *Arcadians*, what was to be done with the Authors of this unhappy Counsel?

*Opinions.*

Some were of Opinion, that as the Authors of the said Counsels were guilty of no Crime, so they ought to be exempt from Punishment.

1. Because whatever advise they gave with a design to do good to the Common-wealth, they gave their advise to a good End, and this they could bear a Testimony to, and the contrary could not be urged by their Accusers.

2. That



2. That none could ever be answerable for their advise in the Publick Assembly; for seeing there were many called to Counsel, it was to be thought that either they would be all of one Opinion, or of different Sentiments; if of one Opinion, what need was there to call many Persons to give their advise in such Assemblies? If of different Sentiments, why should Men be punished for differing in Opinions, when they are permitted to do it there, and that 'tis a solemn Act so to do?

3. That it had been always conformable unto all Laws, that none should suffer for another's Crime, but that this was not the Councillors Crime, but that of Fortune and Event.

4. Where could a Government be furnished with Counsellors, if they were to undergo the severity of the Judicial Centures and Punishment, for that, which Fortune rather acts, than themselves who have her not at their Command?

5. That there is no Punishment to be inflicted where there is no Crime, that the Fault here did not consist in Counsels but in the Event, for the Event depended upon Fortune, and not the Counsellors, and therefore it was clear that the Counsellors ought to be exempt from Punishment.

Others entertained contrary Sentiments of the Action, and pressingly urged.

1. That it did not appear this Counsel was given with a design to benefit the Common-wealth thereby, when if they had considered the great Power of *Alexander*, and the small aid of the *Arcadians* with the weak State of the *Thebans*, the loss and destruction that was now come to pass might then have been easily foreseen by them; and therefore if they had ill intentions, why should not they be punished as Traytors to the Common-wealth? If rash and inconsiderate, why should

should not they in like manner suffer Punishment, for not discharging their Duty, to the Government as they should have done? The ill administration of Magistrates was punished by all Nations, and why should not such as gave advice at the Helm, be likewise called to an Account for their Errors and Miscarriages? 'Tis their business in particular to be wary, and give good Counsel in respect to the Government; and they did not discharge but invert the end of their Duty, when the contrary was acted by them.

2. None indeed ought to undergo another Man's Punishment, but that this was peculiar to the Councillors and the Advice given, and not to the Event: But when is it that the Fault is in the Event? When Fortune does that which no one can do, or ought to foresee: When is the Counsel to be blamed? Why, when a Person thro' inadvertency, does not sufficiently weight the State and Fortune of things, and for that reason brings ruine upon a People. As to matters of Futurity, and such as depend upon Fortune, none is tyed to answer for them, that in consulting about future Affairs, seriously considers whatever refers to the present State of Things. But that was not done in this Case; neither was the present Power of *Alexander*, weighed by them, as it ought to have been; and therefore those that neglect to mind the State of present things in Council, may justly be accounted the Authors of what is to come.

3. That none is bound to answer for their Counfels, tho' dissenting from others therein, (for matters of Government are best weighed when there is an intermixture of different Opinions) But in the mean while this is the Rule they have in point of dissenting Opinions, that those Persons, notwithstanding their contrary Sentiments have  
the

the good of the Common-wealth always before them: The manner and end of Counsel ought at least to be good: Good Counsels are here to be compared with those that are better or best, and evil Counsels with those that are good. That is good Counsel, for which there is some reason, better or best, that has a greater reason for it; bad that has not, or else such as is contrary to the good of the Government: That no Person was bound to answer for good Counsel, tho' others produc'd better: For tho' he that gave the best advise deserved greater Commendation, yet he that only gave good Counsel, deserved no Punishment: But a Senator was undoubtedly bound to answer for bad Counsel if the same were compared with the Good: The reason of the Punishment arises, from his not being able to give a reason for the thing or the advice he gave, or from his administering Counsel that was pernicious to the Commonwealth, which no Man ought to do without having regard to the Good of the Publick; In the mean time there was no reason to be given for this Counsel, nay all reason was against it; why should not they therefore be oblig'd to answer for it?

4. We frequently find by experience, that the Sincerity and Intentions wherewith a Person gives advice, do not appear but by the Event, for who dare openly advise any thing contrary to the Government? Many things are transacted in Counsels dissemblingly; and therefore when the Event is discovered, why should not they look back and enquire into the Counsels that have been given in the Case?

5. Lastly, 'tis necessary, that those who with so much confidence deliver their Opinions in arduous Affairs, should have so much prudence, as not only to seem to talk and debate of present things,



things, but also as it were to prognosticate and foretel what is likely to follow and come after; that therefore he was very justly answerable for the Event that followed, who could and ought to have taken Care of the future Good of the Government, not by Fortune but the Use and Exercise of Reason.

6. If Ignorance be a Crime, or as it were a Crime in some Persons, (as the Civil Lawyers call it) why should not Imprudence be sometimes reckoned to be so? For if a Judge, according to the *Roman* Laws, does thereby make his own Process, why should not a Magistrate cause his own Misfortune by it?

7. It was queried in the same *Roman* Laws, whether a Guardian, besides the Trust reposed in him, was also bound to give Advice and answer for the Event? Why therefore should this be scrupled in a Councillor of State, Magistrate or the like Persons who are entrusted with the Care and Guardianship of the Common-wealth?

### *Resolution.*

The last Opinion was agreed to, and those who were the Cause of sending Troops to the Assistance of the *Thebans* against *Alexander*, who made a terrible slaughter of them, were put to death for it.

### *Event.*

Others, after the inflicting of this Punishment, were more cautious in their Counsels and Consultations about Affairs of State.

*Judg.*

*Judgment.*

It's more especially useful and necessary for a Government, that its Councillors should be answerable for those unsuccessful Events of Things, which were occasioned rather by wrong Argumentation in Council than an adverse Fortune in Acting: for here the Councillors are faulty and therefore criminal, this having been the constant Practice of all wise Nations; whence Privy-Councillors may learn, that 'tis safer for them to give wary and safe Counsels tho' but mean for a Government, than haughty Advice and such as are equally doubtful, in respect to the Success of the Event, for the good of the Government and the Councillors themselves.

## C A S E XXVII.

*How are those People or Cities to behave themselves who are much inferiour in Strength to other neighbouring Princes by whom they are any ways injured?*

**N**EAR unto the Territories of the Republick of Venice in Italy stood the City of Verona, which was governed by Princes of her own; and at the time when the People of Verona were governed by *Martius Scaliger*, they were frequently injured in their Rights by the *Venetians*, who were much more potent than they; and therefore there arose a Debate among the *Veronentians*, what they had best to do under such Pressures to right themselves?

Opi-





wary, they were either to dissemble the Matter and not to own it, or to manage it after another way than that of the Sword. The Business was not here to compare a just with an unjust Cause, but Force with Force, the greatest Fortune with the weakest; and in case the best have the least power, they commonly, if they engage in a War against those who are stronger than themselves, have the worst Fortune. God defended a just Cause, but the same Divine Majesty did no less require that Humane Prudence should be exercised in every matter.

2. That it was more adviseable for them to bear the Injuries, or endeavour to remove them some other way, when they might expect to receive greater damage even from a War wherein they proved successful, than from bearing the Injuries now done them; That it was to no purpose for them to suggest a fear of receiving greater Injuries, if fear were of any force in such Counsels, why should not the same rather be applied unto a chargeable and perhaps unlawful War?

3. Why and what reason had they to think of depending upon the Power of their Neighbours, or assistance from them? For all these things were uncertain, and could any wise People in Hopes and Confidence thereof raise and kindle a new War. Aid might be hoped for, where War was expected (for then hope and fear are equal) but such aid ought to be certain and at hand, when a War is begun already.

4. In the mean time they ought also seriously to consider the great Power of the Republick of *Venice*, when on the other hand the Strength of the People of *Verona* was inconsiderable.

5. They should further consider the whole Event of such a War, the *Veronensians* would either be

con-

conquered, or become Conquerors in it; if they were conquered, why should not they forbear War and destruction? But if Conquerors, must the *Venetians* therefore be wholly conquered or subdued? Must a Peace therefore ensue? Could not the *Venetians* daily recruit their loss, and grow stronger and stronger? Could not they for a longer time bear the Charge even of an unlawful War, than the People of *Verona*, a prosperous and happy one? No doubt of it; and therefore whatever Event hapned, a War was not safe for them.

6. The *Veronensians* were not to content themselves with a bare defence at home; for while the War lasted, their Trade with the *Venetians* would be interrupted, and no doubt but they would endeavour to ravage the open Country, wherein the Fortunes of most of their Citizens consisted; and that therefore they should rather make choise of some other Princes to be Arbitrators between them, by whose mediation their Controversies might be terminated; that they ought rather to renew their Instances and Embassies to the *Venetians*, and choose a little to give way to them, then commit all to the unconstancy of Fortune; they should rather choose something like a War than a War, and take satisfaction for Injuries sustained after a private, rather than a publick Manner: But in case the *Venetians* declared War against them, they would become under a necessity of engaging in it; but since they had not declared nor offered it themselves, they might and ought to prevent all by Counsel: In the mean time they who are intent upon War, it will be better it be made upon them, and not for them to be the Aggressors, that the War may not seem to be so much of their seeking as offered and declared by others.

*Resolution.*

They rejected this gentler way and better advise and declared War against the *Venetians*.

*Event.*

The *Veronensians* proved often victorious in that War, but having at length almost consumed all their publick and private Fortunes, they found themselves as it were stripped naked with such a chargeable War.

*Judgment.*

If we are weaker in Power, we never ought to think it adviseable to wage War with a more potent Nation, who can longer endure to be beaten than we can fight with Success, where the Victory redounds more to our Glory than benefit, and accomplishes rather the Event of a present Battle, than the End, or Cause of the War. Finally where Victory does little or no injury to him that is beaten, and is only a Charge to the Conqueror, any thing is rather to be chosen before such a War.

C A S E



C A S E XXVIII.

*To what Prince his Protection should and ought  
a weaker Republick to commit it self most safely  
in times of Difficulty.*

**V**When the *States* of the United Provinces first revolted from the King of *Spain*, their Power at first was very inconsiderable and next to nothing; and therefore they were under a necessity of seeking the Assistance and Protection of some other Nation, for which reason, they entered into a Debate, whose Protection they had best sue for, whether that of the *German* Empire, *French* or *English*.

*Opinions.*

Most of them were of Opinion, they ought not to have recourse to *Germany*.

1. Because the Emperor being a near Kinsman of the King of *Spain*'s, they could not think he could be real in taking their part against the *Spaniards*.

2. Because the Emperor was of a different Religion from them, for seeing the War began for the sake of Liberty, that, as it reach'd every thing, so did it comprehend Religion also.

3. Because the *States* were chiefly to deduce their Strength from Navigation and Commerce, wherein they were to make use of other Powers than that of the Empire; neither was it advisable for them to have recourse to some of the Princes of *Germany*, seeing they were either of a

different Religion, or if the same with themselves, weak in Power; and it was not to be believ'd, that the Emperor would suffer any Prince of the Empire to take their part against the *Spaniards*. The Protection in like manner of the *French* was rejected by the generality of them.

1. Because the *French* were at that time full of dissentions at home, and seeing they were not able to remedy their own Disorders, how should they do another Nations?

2. Because the *French* would easily agree to relinquish the Interest of the *Dutch*, and seem to favour that of the *Spaniards*, that he might without any more ado recover the Dutchy of *Milan* in *Italy* and other places, held by the *Spaniards* in that Country, which he pretended a Right to, which fear of theirs was grounded upon the Levity of the *French* Nation, and because they had already had frequent experience that the *French* sometimes gave up a good Cause, and favourable fortune to the *Spaniards* upon injurious Terms.

3. Because the Dominions of *France* could easily be invaded by the *Spaniards*, which if once done, as it might very quickly, what aid could the *States* then expect from the *French* to support their sinking Fortunes?

Wherefore most of them preferred the Aid and Protection of *Elizabeth* Queen of *England*, before any other.

1. Because the Religion of the two Nations was the same, and therefore they were united by the same Cause.

2. Because the Dominion of the *States* was nearest unto *England*, which, if once the *Dutch* were overthrown, could scarce be able to support it self against the Attempts of the *Spaniards* who were for ensnaring all their Neighbours and particularly *England*.

3. Be-

3. Because the Queen of *England's* Power was yet entire, and therefore fit for supporting the fortune of the *States*.

4. Because there were very convenient Harbours belonging to the Kingdom of *England*, which should so much the more easily and therefore constantly be used by them, by how much the more united the *States* were in a League with the *English*.

5. Because, tho' a War broke out between *England* and *Spain*, yet *England* could not be easily invaded or molested by the *Spaniards*, and therefore the *English* being not imbroil'd with the *Spaniards* at home, could the more easily send and transport Forces over to the Assistance of the *States*.

*Resolution.*

Wherefore they agreed to have recourse to the Queen of *England*, whose Protection they sought for and obtained.

*Event.*

What succeeded thereupon was very remarkable, for the *States* throve so under the Protection of the Queen, that from the Poor and distressed *States* they came in process of time to stile themselves High and Mighty.

*Judgment.*

No Prince does the more cheerfully, readily or constantly engage in a Cause, than he who therein defends and pleads his own, and therefore when a Nation's Affairs are at a low ebb and in a doubtful



ful State, the Protection of such are chiefly to be fought for.

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### C A S E XXIX.

*How they are to be most severely punish'd, who being caught in the smallest Fault can offend ad infinitum, and as much as those who are offenders in the highest Degree: Lastly, when it is that Pecuniary Punishments are useles in a Government, and in a manner signifie nothing.*

**V**Hen Robert Dudley, the great Earl of Leicester, commanded in chief in the United Provinces for Queen Elizabeth, he took care to have Laws enacted for the preservation of their Coin, wherein those who went about to diminish and adulterate the same were to be punished after a different manner according to the diversity of their Crimes, so that he thought the Cheats of some of those wicked Instruments, as being of a higher nature, should only be punish'd with a fine of six hundred Florins; wherefore at the request of the Masters or Wardens of their Mint, it was debated in the Assembly of the States, whether that sort of Punishment would not rather contribute to the Detriment than advantage of the Republick? And lastly, whether it would not rather be an encouragement for Clippers and such Fellows to go on with their Trade than otherwise?

#### *Opinions:*

The Earl of Leicester and those of his Party, affirmed they ought to have a due regard to this Method

Method of Punishment, for the equity of the Thing required, that where there were degrees of Wickedness, there should be also degrees of Punishment, so that in proportion to the former, they were necessarily to allow of the Practice of the latter in more or less degree in a Government; neither could they do otherwise, to observe that Proportion; which required, according to the strict rule of Justice, that all Punishment should be adequate to the Crime, as that was more or less hainous.

The *States* and Masters of the Mint, who understood the business best, argued the contrary saying,

1. That the rule of Justice and the Publick Good did require, that where there were degrees of the same Crimes, and that the least as well as the greatest Degrees, did both of them great and grievous Injuries to the Government, they ought to be punished severely; for all the Proportion they talked of, and which was of use in distinguishing Punishments, ought not so much to be adequate to the Crime it self, that was committed, of which there were various Degrees, as to the injury and damage done thereby, which injury as 'tis even the greatest in the least of Things, why should not the greatest Punishment be inflicted upon the least Crimes? Now as to their Coin the matter stood so, that the least vitiating thereof, in respect to the Damage done unto others thereby, was of the greatest Consequence: For suppose any should coin two thousand pieces of Gold, which wanted two Grains, and another coined an hundred pieces that wanted four Grains, did not he that coined so many pieces of Gold that wanted two Grains do as much mischief as he that coined those which wanted four? Should not their Crimes therefore be esteemed equal and their Punishment the same.

2. To

2. To impose a pecuniary mulct only for the encouraging of the Cheats, whereby they adulterated the Coin, was no other than to impose no Punishment at all upon them; That a pecuniary Punishment was and seemed to be nothing, while the Author of the Crime was in being who made more gain by it, to the Detriment of the Commonwealth, than if caught, he should be compelled to pay by way of fine to the Government or into the Exchequer: Suppose a Coiner, who should coin some thousands of Gold pieces, every one of which wanted two Grains, should only be compelled to pay a fine of six hundred Florins, did not he by his Crime benefit himself and defraud others more, than he was forced to pay for his Offence? Therefore he offends and is punished for his Profit, whose Crime, seeing it runs as it were to an infinite Offence, a pecuniary Punishment is esteemed then, as they say, definite.

*Resolution.*

They therefore thought fit to repeal the former Laws and Punishments, and to inflict upon the Adulterers of their Coin, be it in what degree it would, one only Punishment and that to be no less than Capital.

*Event.*

What followed was that their Money from thence forward was less and not so frequently adulterated.

*Judgment.*

He deserves the greatest Punishment, who is taken in the least degree of committing that  
Crime



Crime, which brings the greatest Dammage along with it: If the Degree of the Crime committed does not make the Guilty to be upon the same Foot, yet the Crime certainly does, and therefore the Punishment of those who are guilty of such Crimes in the least or greatest degree ought to be alike: Lastly, all pecuniary Mulcts signifie nothing, when the Offender by the practice of his Crimes gains more than the Punishment inflicted compensates for, and notwithstanding the infliction of the Punishment, does still enjoy the Fruit and benefit of his Offence; for such an one receives rather a Reward than a Punishment for his Wickedness.

### C A S E XXX.

*What good method are People to take (who have entred into a League, for the Expulsion of a Common Enemy) for preventing strife about Priority of Command, which destroys the End, in sending Aid to, or receiving it from one another?*

**I**N the Year 1563. the Protestants of France in the Province of *Aquitain*, being very apprehensive of the Power and dangerous Designs of their Enemies the Papists against them, the several Cities bethought themselves of entring into a mutual League offensive and defensive, that in case of Necessity and Distress, the one should send a sufficient and timely succour of Soldiers to the other; but then a Controversie arose between them, who ought to have the Command of those Auxilliary Troops? Whether they who sent them, or else those

those to whose Defence and Assistance they were sent.

*Opinions.*

While they were consulting about this Affair, they were divided in their Opinions, some contending that the chiefeſt City which gave the greateſt Aid to the reſt, ought to have the principal Command; becauſe the greateſt honour was to be given to thoſe that did moſt, for they were to be the greateſt ſufferers, in caſe any miſfortune fell out thro' the careleſneſs or unequal ſedulity of others.

But others alleadged they were all equal in the League, and therefore none amongſt Confederates ought to take upon him to be greater than the reſt; for where there were Confederates of an unequal Fortune, tho' ſome contributed greater, and others leſs aſſiſtance for the defence of the Common Cauſe, yet they all ſeemed equal, while every one contributed the Quota agreed on; and therefore they thought it moſt adviſeable to appoint one Perſon to command the Auxilliary Troops in the Name and with the joint Advice and Concurrence of all, for that might be a way to content all Parties.

Others again urged the contrary, that it would be more to their Advantage, when any one was ſent to ſuccour another, that he ſhould have the Command of the Succour.

1. Becauſe if the forementioned Opinions were followed, then they could neither obviate the Ambition of Men nor prevent diſſentions: Ambition they could not, in caſe one City was preferred before another, nor diſſentions, if ſo many were allowed to give their Votes who ſhould be the Commander

mander of the Auxiliaries ; and so it would come to pass, that their Ambition and Dissentions would be the Cause of their losing fit opportunities and the miscarriage of their Designs.

2. That he who wants aid from another, and receives the same according to the Articles of their Confederacy, must know very well, how he is to use the same: And therefore they ought principally to have a regard thereunto in a Controversie of this Nature.

3. When the Auxiliary Troops have joined the Forces of those, to whose aid they are sent, and upon that Account are as it were united into one body, its convenient, they should acknowledge but one Commander in chief, and he above the rest, whose care and industry was like to be greatest in the right use of Auxiliaries, because his Fortune lay at Stake.

4. Lastly ; Upon this Consideration none is preferred before another, and none postponed ; the present Cause and Necessity of each Confederate having always the preference before the rest.

### *Resolution.*

At last they agreed upon this Article in their Confederacy, that if any of the Cities of *Aquitain* concerned in the League, stood in need of the others aid, they were to demand and have it, and the Auxiliary Troops were to be under the Command of those to whose Assistance they were sent.

### *Event.*

Things happen favourably in such Cases, for hereby you do at present give no cause for exercising Mens Ambitions, and prevent the same for the future.

*Judg.*



## Judgment.

Seeing Ambition is peculiar to a great Fortune, and yet usually the Ruine and Destruction of it, its manifest it does not behove those that are in Distress to be Ambitious: But so it usually falls out, that even that depraved Affection and *Remora* of publick Business reaches even afflicted Fortunes: For Ambition, says *Tacitus*, is the last thing Wise-men forsake. There is no other remedy to be had against it, than where there are many ambitious Persons, that they are so to order their Consults as to make way for the satisfying of every one in particular; and this may be done, if the Thing, about which they ambitiously strive, be not always granted to one, but all, if so be they have not a regard to their Ambition, but to the Cause and Necessity of every one in their Turns: The *Aquitani*ans did therefore very prudently, not to seem to prefer some before others, but as occasion offered, allowed the preference of Command to each place, if their Circumstances required such aid, as is above mentioned: For hereby no body at present was postponed, tho' another had the preference, seeing himself in his turn was to have it in like manner. But the Laws of safety and Necessity require, that Auxiliaries should be subject to those to whose assistance they are sent: Its true the *States* of *Holland*, by reason of the Necessity of their Circumstances could not in the beginning of their War against the *Spaniards* obtain this from the *English*, and they found the great inconveniences of it by letting the Earl of *Leicester* have the chief Command amongst them upon that Lay.

C A S E

C A S E XXXI.

*How and when upon terminating of Civil Wars, are those things which by the Rules of War and Victory have been taken away from others, of right to be disposed of?*

**V**Hen *Alexander* the Great had overthrown the *Thebans*, he found some Writings, whereby it did appear that the *Thebans* had lent the *Thessalians* an hundred Talents, and that the *Thessalians* owed the *Thebans* an hundred Talents: Now *Alexander* to befriend the *Thessalians*, who for some time fought on his side, gave up the Writings to the *Thessalians*, and by a singular piece of his Favour remitted the Debt to them: But afterwards when the Affairs of the *Thebans* began to recover, they apply'd themselves to the *Thessalians* requiring them to repay the hundred Talents which they owed them, which the other refused, constantly alleadging *Alexander* by Vertue of his Authority and out of his singular Kindness remitted the whole Debt to them: Wherefore it came to be debated by the principal Cities of *Greece*, to whose determination the matter was referred, which had the greatest right on their side the *Thebans* or *Thessalians*?

*Opinions.*

In the first place it was argued in behalf of the *Thessalians*, that those hundred Talents, which they had borrowed from the *Thebans*, were remitted to them by *Alexander*, and to that end  
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*The Spoils of Victory how justly to be disposed of.*

the Writings wherein the Debt was contained was given them up by him; for by this means it appear'd that he who gives up the Obligation, frees the Debtor.

2. That *Alexander* had done this by right of War, and according to that Right whereby Kingdoms and States, the Bounds of Cities and Nations are contained; for tho' the Right of War derogates from the rule of other Laws, yet it has been looked upon by all Nations to be a sufficient Right.

Others on the contrary argued for the *Thebans*, saying,

1. That they claimed a restitution of that which was taken away by Force.

2. That as to the Rights of War, that signified nothing in matters which came under the Cognizance of a judicial Procedure.

3. That those things which were taken away by Arms, were not to be retained but by Arms; and therefore where they prevailed, there was no Judge to be then in the Case: Where there is a Judge, the other signifies nothing: That free Persons were upon no other account Slaves, but because they were taken in War, and possess'd by no other right than that of War.

4. But as to what was bestowed by *Alexander*, it was of that Nature that it could not be given away by the Conqueror: For that in short is no longer the Conquerors, than whilst he holds it: But the right in this Case was in the Writings, which right was incorporeal, and could not be held with the hand, as the Lawyers term'd it; for the Condition of an Heir was one thing, but that of a Conqueror another; that right pass'd over to the former, but nothing save Bodies and Goods to the other.



5. It was farther urged in behalf of the *Thebans*, that the Debt in Controversie, was a publick Debt, and not belonging to private Men For which reason the Right of a publick Debt could not pass from them to the Conqueror; for what the People lent, was due to all, and as long as any private Man of them survived, he was and ought to be looked upon Creditor for the whole Sum: Bnt now all the *Thebans* were not conquered and cut off by *Alexander*, for some of them had made their Escape, and others of them he spared, who had withstood the Revolt of the rest.

6. If the Writings were given the *Thessalians*, it did not therefore seem that what was contained therein was granted them for ever, for the Right did not simply consist in the Writings, but was deduced from the Writings to be determined by Course of Law.

*Resolution.*

Authors have not informed us how the Case was decided between the *Thebans* and *Thessalians*; but if we compare the like Examples of other Controversies that have hapned between the Ancients with this now stated, there will be scarce room for any to doubt, but that the Matter was given for the *Thebans* against the *Thessalians*, an Example of which we have still extant in the *Roman Histories*, which hapned after the Battle of *Pharsalia*: There was a Difference on Foot between one *Flavius* a *Roman*, and the *Therachini*; *Flavius* insisting that the others owed him a great deal of Money, as he was made Heir to a certain Person by vertue of whose will he claimed; the *Therachini* did not deny, they were indebted to him, but they plead-

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ed that *Cesar* had freely remitted that Debt to them: Hereupon the Case was referred to the Decision of *Cicero*, to which the *Therachini* submitted, and so they were ordered to pay *Flavius* what they owed him.

### *Judgment.*

The thing was determined so, or ought to have been so; for in the time of Civil Wars and Tumults, the Rights of private Persons are altered; but it ought not to be so with Communities, which, as they have nothing in Common with Civil Wars, are therefore not to be decided so much by force of Arms, as by the equitable Rules of Justice.

## C A S E XXXI.

*After the making of a solemn League with another Nation, in the observance of which many things are found by experience to be injurious to the Publick; how are Counsels to be regulated for the Good of the Government, yet without any violation of the Publick Faith?*

**I**N a League made between the *States of Holland* and *Queen Elizabeth*, as the Protectrix of their Cause, amongst other things it was agreed, that the Queen's Embassador should always be present in their supreme Court, which was called the *Council of State*, that he might hear and inspect into what ever matters were transacted there in relation to the Government. In the mean time the *English*, who

who had sent a considerable Force to their Assistance, either carrying themselves insolently in divers Places and upon divers Occasions to the prejudice of the People and Government, or the *States* feigning for their Interest that they did so; the Affair was brought before the supream Council aforementioned. They thought it tended to the benefit of the Common-wealth, that the Usurpations and Insolencies of the *English* should be curbed and restrained by their Authority; which was as absolutely necessary to be done, as it was scarce safe for them to whisper about it in that Assembly, because of the presence of the *English* Embassador, who being bent to promote rather the Interest of his own Nation than the benefit of the *States*, was for that reason justly to be feared by them: Wherefore it was debated in the *States* Provincial of *Holland*, what was best for them to do in so arduous an Affair as lay before them, whereby they might retain their Liberty, and the *English* not be incensed against them, as the Violators of the League, in case any thing were altered or innovated therein?

*Opinions.*

Some were for sending an Embassador to Queen *Elizabeth* to endeavour to induce her to dispence with that Article whereby her Embassador was impowered to sit in the Council of State, and as a Reason for it, to lay before her that it was by no means for the benefit of their Common-wealth, whose safety and prosperity the Queen was for promoting.

But others thought it to no purpose for them to take those Measures, seeing the Queen could by no means dispence with a thing which carried



so much authority with it, and was of such consequence in anothers Government; for Princes would rather choose to give any thing away, than remit those Rights whereby they have, according to their Articles, Power to exercise any Authority and shew their Majesty in another Republick.

Others were for meeting under hand, and unknown to the *English* Embassador, and so consult about the Methods, how they might restrain the Insolency of the *English*. But this in the mean time seemed to others a very unsafe way, for by this means the *English* would have cause to suspect, that the *States* conspired secretly to ruine them.

While these things were thus agitated too and fro, *John Olden Van Barnvoelt*, who was then Pensionary of *Holland*, was of Opinion that they might without violating of the League, and giving any manner of suspicion, easily take another method, whereby they might very well provide for the Security of the Government; and therefore his advice was that they should erect two Courts or Conventions of the States of the United Provinces, whereof one was already in being, and call'd the Council of State, and wherein it should be ordered that the Deputies of the Provinces, should intermeddle only with meaner things relating to the Government, and where the *English* Embassador ought to be present according to the League between the two Nations, and yet without any prejudice to the Authority of the Government: For thither as we have said, nothing for the future was to be brought under Consideration, of any great Moment, and so might be communicated to the *English* Embassador: Then he urged that another Assembly, which was to be superior to the first, should be erected anew, and be called the select Assembly of the *States General*; wherein the Deputies

puties of the Provinces were to take notice of the weighty Affairs of the Common-wealth, and such as hapned out of Course: Now seeing the *English* Embassador had no power from the Articles of the League to be present in this Assembly, they were therein at Liberty to consider what ever might be proper for the freeing of the Common-wealth from the exorbitant Licentiousness and Usurpations of the *English*; that they might very well argue for the Necessity and Reason of erecting this new Assembly, seeing the Affairs of the Common-wealth were so increased, and so many things came before them out of Course, that one Assembly, *viz.* the Council of State, could not possibly manage and go thro' with.

*Resolution.*

They agreed to this last Proposition, and of one Assembly made as it were two, and the more arduous Affairs were assigned to the Care and Management of those, who now in consulting about them, could not be disturbed in the pursuit of the Common-wealth's Good and Advantage by the presence of the *English* Embassador.

*Event.*

From thence forwards the Publick Liberty was better regarded and preserved, and the Licentiousness and encroaching Authority of the *English* daily more and more curbed, neither yet was there room for them to make any Complaint to the Queen of *England* about the violation of the Agreement, seeing the Embassador had constant access to that Assembly, into which alone they had Covenanted he should be admitted.

*Judgment.*

When former Constitutions and Leagues are not for the benefit of, but hurtful to a Government, and yet ought to be continually looked upon as firm and inviolable by reason of the Publick Faith; they are to have recourse to new ones, whereby the old ones are neither taken away, and yet the Inconveniencies that arise from them, prevented: *Tiberius* furnishes us with an example hereof, tho' done by him to an ill purpose and end. Seeing by the ancient Laws of *Rome* it was not lawful to examine a Slave so as to make use of his Testimony against his Master, and yet that *Tiberius* in order to the ruining of Masters, had frequent need of the Testimony of Servants extorted from them by the Rack; he devised a new Law, says *Tacitus*, and commanded that the Servants, who were to be made use of as his Evidences against their Masters, should first be made free by the Magistrate, and then be racked to make their Confession, not as Servants but freed Men.

Thus when a Priviledge was granted to most of the Cities of the *Low Countries*, that no Citizen should be imprisoned or racked and yet that they frequently offended against the Government, and whose Crimes ought not to go unpunished; it was ordered without violating the former Priviledge, that such Citizens as were Offenders, should be divested of their Freedom, whereby they might be imprisoned & examined according to the Laws of the Country: These Counsels may be reckoned amongst the *Ar- cana's* of Government. Indeed the Priviledges and Constitutions of the Republick seem to be violated thereby, but they only seem to be so: For hereby the



the Publick Faith in respect to former Transactions is maintained, and yet the Necessities of the Government supply'd and provided for, and all methods are to be used for the preventing of any damage that may occur to it; and if in private Matters according to the Opinion of the Lawyers, Animosities are to be restrained and Friendships amplified, Why not from the like Reasons should not those things be restrained, which not only tend to the Disadvantage but Ruine of the Publick Liberty?

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C A S E XXXIII.

*How ought the Ministers of Princes and chief Magistrates to act, when being remote from their Superiors; they are commanded to do some things, which they see and certainly know must tend to the great detriment of the Subject and occasion Tumults?*

**I**N the Reign of the Emperor *Charles V.* there was an Order given the Vice-Roy of *Naples*, that he would publish an Edict concerning the Inquisition in that Kingdom, and take care to set up a Court of Inquisitors at *Naples*; which Inquisitors are extraordinary Judges, who are to inquire into Matters of Religion after a singular Method, and without any Regard had to the common and received Form of Law, by whose Artifice, seeing it had been often experimented, Violence had been done to the Lives and Estates of the best Subjects, under the specious, but false Pretence of Religion,

wherefore the *Neapolitans*, being sollicitous about conserving their ancient Liberty, did privately and openly assert with great Heat, that they never would endure that the Inquisition should be introduced amongst them: Hereupon the Council entered into Debate, What the Vice-Roy was to do upon this Occasion, and how the Emperor's Commands were to be justified?

### *Opinions.*

Some thought it most advisable for him, to do nothing in so difficult a Matter, especially seeing the same was attended with manifest danger.

1. Because the Vice-Roy would seem to prostitute the Emperor's Authority, if he should urge and press the Execution of the Emperor's Command without effecting of it, and Men would interpret, that the Emperor would have a thing done which he could not accomplish.

2. Because the Vice-Roy would seem to lose his Power and Esteem in other Things, when by this Essay he was apprehended to be incapable to cope with and overcome the Stubbornness of the Subject. For if his Authority but once and even in one Affair failed, it would scarce be maintained in other things; and in the mean time, it was much better not to attempt great Matters wherein there was like to be no good Event, but a contrary one, than to attempt them in vain, and to discover, as *Tacitus* says, what things they are for which we are no Match.

3. That the Emperor's Command was to be taken and prosecuted in a moderate Sense; that the same was not to be interpreted in an absolute Sense, but conditionally, which, tho' not inserted in express

press Words, yet might easily be understood, to wit, that he commanded that to be done which was consistent with the good of the Government. But there was now great reason to fear, lest the Emperor should lose the whole Kingdom of *Naples*, if the Inquisition were put upon the Subjects against their Will; that the Safety of the Government and Prince is always the highest Command and above all other whatever: That this was always to be understood, according to the Rule whereof, all good and prudent Magistrates ought constantly to interpret all other Commands.

Others, on the contrary, thought this Business was not altogether to be laid aside; for, tho' all could not be put in execution, yet it was the Vice-Roy's Duty to attempt and do whatever he was able to do without incurring any present danger.

1. For if he did or attempted to do nothing towards putting of the Command he had received in execution, the Vice-Roy might easily be accused and charged with being Slothful and Negligent; Negligent, as having not done what was yet in his power to do; Slothful, as having abstained from putting the Emperor's Command in execution, as it were out of a vain fear of danger; and therefore where he could not execute the entire Commands of his Master, yet the Servant was surely to do as much as he could for the accomplishing of them.

2. That therefore the Magistrates and Citizens were to be founded, and with all the Art imaginable persuaded either to admit of the Inquisition; or, if they could not be brought to it, the Vice-Roy, for his own part, must be understood to have done his Duty; for in case the *Neapolitans* proved  
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obstinate in the Matter and would not comply, the fault of the Emperor's Command, not being executed, would not lye at the Vice-Roy's Door, but other Mens. Ministers of State can never have a better Defence for themselves and their Cause, than when the retarding or not executing a Prince's Command may justly be imputed unto others. Where the Minister is understood not to be in the fault in Matters of this nature, he ought so to act, that his own Diligence, but the Fault and Obstinacy of others, may manifestly appear.

3. In the mean time they were to perswade the People as much as might be, that the Inquisition would not be introduced amongst them by force of Arms and Violence; for, where Perswasion and other lighter Methods will not do, they must presently have recourse to Arms; neither must the Command received be interpreted with so much latitude: When a thing is commanded, all ordinary and gentle ways of proceeding are also understood to be commanded, but not extraordinary Methods: And of the number of these, Force is one, and therefore it was proper for them to wait for a new Command from the Emperor upon this Occasion.

#### *Resolution.*

They thought fit to agree to this last Method, as being safest and most reasonable.

#### *Event.*

There was nothing done at that time for establishing the Inquisition in *Naples*; but yet the Vice-Roy was not negligent of his Duty, who, in order  
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to the accomplishing of the Emperor's Command, did every thing that could be done without dam-nifying the Government and raising Commotions amongst the People: And so tho' the Inquisition was rejected by the *Neapolitans*, yet he was blameless and exempt from Punishment.

*Judgment.*

Where a Prince's Command cannot be entirely executed, it is not therefore totally to be omitted and laid aside; but seeing the whole contains many parts, and that we must also understand that there are parts in the whole of a Command, whatever can be done by Ministers of State, is to be done by them; he that acts otherwise is imprudent, and when he comes afterwards to be charged with Cowardize, he loses the Security of his Defence: Finally, Prince's Commands are to be executed with moderation, neither is it proper or safe to use Force in the execution of them when other Methods will not do, without receiving new Com-mands in that Case.

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CASE

## C A S E XXXIV.

*When many or all have been Offenders in a Government, after what manner may a due Punishment be safely inflicted upon some of them ?*

**H**enry de Medicis, Grand Duke of Tuscany, having taken the Castle of *Musita*, and knowing that the Soldiery did by their Licentiousness and Debaucheries, do the Neighbours and Inhabitants much Injury, he thought fit to endeavour to put a stop thereunto in time; and therefore he ordered a Soldier, who had been guilty of a hainous Offence, by ravishing of a Maid, to be seiz'd: But all the Soldiery resenting the Fact, as fearing all of them to be made Examples of in the same manner, seeing they were conscious to themselves that they were guilty of the same Crime; it came therefore to be debated in a Court-Marshal, after what manner they might punish some Offenders without causing the other Soldiers to mutiny.

*Opinions.*

Some, as believing the punishing of them would be unseasonable and injurious to the Government, thought it best by an Edict to terrifie them with the Apprehensions of the severest Punishments to be inflicted on them, who for the future should be found guilty of such hainous Crimes; for so, tho' the former Evils went unpunished, yet those that were to come were forbidden; for, seeing all  
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of them were already guilty of the same notorious Crimes, they were either all, or few of them to be punish'd; all of them could not be punish'd, lest it should be looked upon to be rather a Butchery than a Punishment; and to punish a few, would seem unjust, when the rest were freed, who deserved the same Punishment, nay, that all of them, as deserving and fearing the same Punishment, would plead the Cause of those few. And to this it was farther suggested, That the Rumour of Severity in a Government that was new and upon the first establishment of its Soldiery, would be unsafe and of bad consequence.

Others, on the contrary, argued the Punishment ought not to be remitted, for if all of them were exempted from it, they would again all offend: Moreover, it was the Interest of all, that some should be punished, that Impunity lead the way to Impiety, and facilitated their return to the same Wickedness again; nay, that there was no way to satisfy the Neighbours and People, whose Love and Affection they stood in need of, than at least by inflicting some Punishment upon them; and, in the mean time, the same Persons thought they were so to act, that Severity might be used without Dangers accompanying it, and the Fear of Punishment without Ill-will: And here they varied in their Opinions, some thinking it best, that the Punishment should be denounced, but not inflicted; that it might be denounced by trying and condemning them, but not inflicted, by the interposition of the grand Duke's Favours and Pardon after Sentence given; and thus their Enormities would not go unpunish'd, in respect to the Sentence, which at least fixed the Punishment of Disgrace

grace upon the Criminals; and thus this Punishment would be inflicted without any Tumult, by the interposition of the Prince's Favour and Pardon. But these things seemed to most of them no more than trifling, and therefore they fell to consider how they should inflict the severest Punishment, and yet execute the same warily upon them.

They thought fit therefore, in the first place, to seize those who were the most hainous Offenders; and this would make the rest favour them the less, and be less fearful of themselves, as not being conscious of their being guilty of such horrid Crimes.

2. That those Persons should be seized, who were hated upon other accounts by the generality of the Soldiers, tho' they were not equally guilty with the others, in respect to the Nature and Degrees of their Crimes: And so the Punishment would be pleasing, tho' not in respect to the present Crime, yet by reason of the Hatred that was born to them.

3. That the time of inflicting the Punishment should be dissembled, and some of those Troops who were guilty of the like Offences, were to be commanded out of the Fortrefs, as it were upon some necessary Expedition, by feigning some Danger from their neighbouring Enemies; and that, upon their return, they would scarce think any more of the Punishment inflicted; for Commotions in such Cases are oftner raised for preventing of things, that by reason of what is already done and cannot be prevented.

4. In order to the curbing of those that were to stay behind in the Cittadel, they should send  
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for other Troops that had been untainted, by whose means the rest might be kept within the Bounds of their Duty.

5. That when the Punishment was inflicted, all the rest should be pardoned, and told, That those whose Hearts were affected with Repentance for what they did, should separate from the rest, in case there were yet any among them that remained stubborn and without remorse; and therefore, when now the fear of Punishment was taken away, the Criminals would seek for no Protection for themselves, by continuing obstinate in their former Crimes or new Offences: For it was known by Experience, that many of them had transgressed, not so much because they loved to persist obstinate in their Offences, as because they were afraid of Punishment, which Men commonly endeavour to prevent by adding to their Guilt and a more obstinate adherence to their Crimes.

*Resolution.*

This last Method was best approved of any, and the same put in execution.

*Event.*

There was an Example made of their Crimes, which did not go unpunished, and the Punishment caused no Tumults, nor gave any occasion for farther Evils, for all the rest being pardoned, forbore the said Offences; neither was it thought any longer safe, for them to deserve a Punishment any farther, which had justly been inflicted upon some of their Fellow-Soldiers, but graciously forgiven them.

*Judg-*



*Judgment.*

No publick Offence ought to go publickly unpunished; and therefore no Fear ought to deter Magistrates from punishing the Criminal; for those, who out of Fear defer the Infliction of Punishment, invert and corrupt the Order of Government, and Fear the Subjects instead of being feared by them: In the mean time Punishments are to be so inflicted, that no Tumult may be raised, and they are prevented by sending for untainted Troops from another Place, by punishing some out of a greater number of Criminals, and they the most corrupt of any, and who for other Crimes are hated the most by their Fellow-Soldiers: If, lastly, by the Punishment of a few, of which there was a necessity, there was a Fear struck into all, and, at the same time, neither the Examples of Impunity nor Justice be wanting by that Procedure, for the preventing of further Disturbances, it would be well; other Restraints frequently do more hurt than the Crimes themselves.

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**CASE**

C A S E XXXV.

*What Method in Law is to be observed for compelling Subjects to pay their Debts in the time of Domestick and Foreign Wars (whereby all things are laid waste) or presently after.*

**I**N the Reign of Philip the Second, King of Spain, when the Provinces of the Low-Countries were afflicted with an unhappy Civil War, and most People were spoiled and plundered of their Goods by the Soldiery; cruel and unreasonable Creditors in the mean time sued their Debtors for the Payment of their Money, whereas they were not at all in a condition, or at leastwise not then to pay them. Now this Matter came to be debated by the chief Magistrates, and the Question was, Whether the ordinary and received Method of administering Justice ought now to be observed for the Creditors against the Debtors?

*Opinions.*

They were divided into two Parties, whereof the one pleaded the Cause of the Creditors, and the other of the Debtors.

Those who spoke for the Creditors argued thus:

1. That those who fought their due, ought  
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to have Justice done them according to due Course of Law; and that their Actions could not be laid aside, who had just ones against others; and, lastly, that it is not the Magistrates part to deny Justice to any Man but to administer the same.

2. That those Misfortunes which befall Debtors through the Inconveniencies of a War, ought not to excuse or hinder the Actions of the Creditors; just as when a Person in peaceable Times takes or Farms some Ground from another, though he receive no Benefit from it, through the unseasonableness of the Weather, but that the same prove wretchedly barren, yet he is bound to pay his Rent: So these Debtors ought not to be freed upon the account of the unhappy War that raged in their Country.

3. That the Justice of the thing consisted herein, that in case the Land or Farm which a Person had taken, proved at any time fruitful beyond expectation, yet the Landlord would have no right to demand any more Rent of him, than what was before agreed on between them: As therefore the Tenant, when things answered beyond expectation, was not obliged to pay the Landlord any more Rent, so the Landlord, when Matters went otherwise, was not to remit any thing of his Bargain to him: Nay, the Tenant ought to use that Care and Industry as to live moderately upon the Product of thriving Times and Seasons, that so this might compensate in some sort for those Seasons that fell out otherwise less to his advantage: That the Circumstances of Things in the present Case was the same, and therefore they ought to proceed in the Case of Debtors and Creditors after the same manner as with the Landlords and Tenants.

Others



Others argued for the Debtors and the Necessity of the Times, and would have them take a gentler Course, saying,

1. That indeed it was not the part of a good Magistrate to deny any one Justice, or not to receive their just Actions and Complaints; but in the mean while it behoved good Magistrates to put them off, when they were not seasonably motion'd; that it was not enough, that a thing should be just, which a Person justly sues for, but it's necessary the manner should be so too, whereby he sues: That the ordinary Methods of Law are to be pursued in ordinary Cases, and such as daily happen, but in extraordinary ones, why should not a new Method be used? That Magistrates were not always tied to the Laws, but sometimes to Necessity and the Circumstances of Times; that this Moderation was allowed the Magistrate by all Laws, lest in exerting the Rigour of the Law, the greatest Injury be committed.

And since according to the ordinary Course of Law it is allowed Debtors that are cast and who through their own Negligence or ill Credit are become such, to have some small Time to satisfy their Creditors in, undoubtedly there is much more reason, and therefore a space of Time ought to be allowed, those Debtors, who are become such, not through their own Fault, but publick Calamities and unavoidable Losses.

2. It's true, those Misfortunes which have befallen the Debtors, because of the War, could not in strictness of Law prevent the Action of the Creditor, but in the mean time the same deserved and required them to exercise Humanity towards them; from the Law of which Humanity,

seeing the Laws of all Nations and the particular Laws of every Country do arise, therefore the same ought to be exercised herein. Now, according to this Rule, the Creditor was not always a Creditor, but sometimes a Man; a Court of Judicature was not always to be regarded; but sometimes Necessity; and, lastly, a Magistrate was not always to look upon himself to be the Judge of the Cause, but sometimes of Necessity.

3. It signified nothing for them to talk of the Fruitfulness or Barrenness of Land in this Case; for they might in peaceable Times reserve the Product of fruitful Years, and by past or future Crops easily compensate for any Damage sustained by Barrenness: But in these cruel Civil Wars, most People were robbed both of the Goods, which they had hitherto saved, and such other Misfortunes brought upon them, that if they were tied to pay all the Debts they had contracted in the mean while, they would be never able to go through with it; from whence therefore could they find Ease and Remedy under so great a Misfortune, unless it were from moderating the Laws in their Case.

4. Citizens under the same Government ought to bear an equal Share of the Common Calamity, and the same is the more easily born, by how much the more there are to suffer, that therefore the Damages ought to be computed; and divided equally by the Authority of the Magistrate.

5. And how could the Creditors think their Debtors were able to satisfy them? That some of these were totally reduced, and therefore could do nothing, and unless they had their Debts forgiven

given them; their Fortunes and Industry were quite ruined for the future, and not being willing to struggle with the World for the sake of their Creditors rather than their own, they would always be involved in Debt: That some of them indeed had Lands, Cattle and Houses yet left them, and that the Payment of their Debts was of necessity to be put off for some time; for if in such a difficult Conjunction they should be forced publickly to sell what they had yet left them, they must part with them for little or nothing, and so be made still the more miserable.

6. That the Confederate-Troops and such as had been raised by the Publick had been burdensome to many Houses and other Places, why therefore should not the Damages done some Persons by them, who fought in the defence of all, be sustained in an equal proportion, seeing all had been partakers of the Fruit and Benefit of their Defence; for 'tis just, according to all Laws, that he should not be exempt from the Damage, who either hath or does participate of the Advantage,

*Resolution.*

In pursuance to this gentler Opinion there was an Edict made and publish'd in the Name of *Philip* the Second, King of *Spain*: The Terms and Articles whereof, which are most for the present purpose and of greatest moment, were these:

1. That Creditors should not seize the Persons and Goods of Debtors, though they had Execution against either or both, according to Form of Law; but they were to apply themselves to



the Supream Court of each Province, and by Petition to set forth their Pretentions and the Reasons of them.

2. In Case the Judges of the Provincial Courts, upon hearing of the Cause, thought there was just Cause for a moderate and not rigid Determination, by reason of the Calamity of the Times, they were to refer the Debtor and Creditor to fit and understanding Arbitrators.

3. The Business of the Arbitrators was not to proceed according to strictness of Law in the common Form, but with regard to calamitous Times both present and past, and the greater or lesser Dammage sustained by the Party, and so determine whether the Debt should be lessened, remitted, or the Payment deferred, and make the Creditors satisfaction in the way and manner they pleased.

4. If the Creditors or Debtors refused to stand to the Judgment of the Arbitrators, the Cause was to be referred to the ordinary Judges.

5. But the Judges were not to proceed according to the common Form of Law, but to take cognizance of this Cause according to the Articles of this Edict hereafter mentioned.

6. That they ought to have due regard to the Profits that did not arise from any personal Obligation, but from the Possession, Hiring and Occupation of Lands, Tenements, Fields, Houses and other Goods of that kind, whether the Possessor, Tenant or Occupier, either by Fire, Inundations, Invasions or Plundering of Soldiers, was dispossess'd of the Benefit of them, the same remaining uninhabited, untill'd, forsaken, and barren; and so the Debtors, from the time when such Calamities befell them to that Day, were

were to be declared free from the Debt and Payment of it.

7. If the same Possessions were partly inhabited, partly not, partly tilled and partly untilled, nay, sometimes all tilled or untilled, inhabited or not, the Judges were to have regard to the Benefit or Loss which the Debtors had received, as also to the Time, and so partly to remit and partly order the Payment of the Debt, as they saw cause.

8. But if any were personally obliged to the Payment of any Rent, and yet so harrassed with the Calamity of the Times, as to be found incapable of paying it, they were for ever to be discharged of the Debt; but if they were found only incapable to make present satisfaction, and that they might afterwards be thought in a condition to do it; the Judges were to appoint a Time of Payment as they thought fit, and cause the Creditors to surcease the Prosecution of their Actions till then.

9. In the mean time the Debtors were to bring Proof into Court of the Damages they had received; and if the Creditors were convicted of falsehood therein, and that other Matters might justly be laid to their charge, let the same be done.

10. Moreover, In order to prevent Debtors from making use of this Decree to cover their Sloth and Negligence, they were to return as soon and as often as they could to their Lands, Farms, Houses, &c. and to dwell in and cultivate the same: And the Industry of Neighbours who did return to their Lands, Farms and Houses, was to be every one's Rule and Example in this Case.

*Event:*

And all Parties were satisfied with the Determinations of this Edict, tedious and litigious Suits prevented, and the Reputation of the Judicial Courts, being supported by this new Decree, was maintained, tho' they swerved from the ordinary Method of administering Justice.

*Judgment.*

Judges and Magistrates are not always bound by the common Rules of Law, but sometimes must give way to Time and Necessity, when amidst the Violence of Arms, and especially of Civil Wars, some cannot make use of their Right, neither can nor ought others to be severe towards them: But where the ordinary Judges are not thought to give way to Injustice and partial Affections in such judicial Proceedings, Princes and chief Magistrates are to make a Vertue of Necessity, and preserve the Reputation of the Judges untainted, if they introduce a new Form of Justice, suited to the Time, Persons and Things: for whatever is done against the common Course of Law, the more contrary it is to the received Laws, the more lawful it will be thought to introduce a new Law.

**CASE**



C A S E XXXVI.

*By what Method may clandestine and close Machinations and Designs of Persons against a Prince or Government in time be brought to light.*

**I**N the Reign of Queen Elizabeth there was a mighty Rumour spread up and down the North of England, that the Earls of Northumberland and Westmorland with others had a Design very quickly to break forth into open Rebellion; and for this they had as yet no other Ground than the said Rumor and publick Fame; wherefore it was debated in the Queen's Council, what was necessary to be done for the Prevention of the Evils which might be expected from that Rebellion, if true, in case it were not timely suppressed.

*Opinions.*

Some were for dealing gently in this Matter, and looked upon the Rumours spread by the People to be vain and groundless, since they could produce no Author for them; that Fame often erred; and if the Queen took the Report as a Thing certain, this might be the occasion of much Mischief; that Princes often caused the faithfullest of their Subjects to turn Rebels, if once they began to discover they entertained any manner of suspicion of their Fidelity.

But others objected against this and alledged, the Supream Power ought to be neglectful of nothing;

thing; that Fame lyed, was often true, and that would be found out; and yet, whether that Report were true or false, it concerned both the Queen and those Earls to know the certainty thereof: if true, it concerned the Queen to know it, that she might provide against it; if otherwise, it concerned the Earls, that their Fidelity might be the better and more certainly discovered.

Some of the better Councillors were for sending Troops forthwith into the North, to be there ready against any Event, so, that in case the Rebellion did break forth, they might nip it in the very Bud and suppress it: Against which others objected, saying, This Advice was unseasonable, and nothing else than to carry hostile Arms thither, and perhaps it might even irritate those to rebel who were Lovers of their Duty and publick Tranquility, and would be circumvented to it by the Injury they conceived they sustained from that wicked and unjust Report of them: Therefore it was convenient they should first be assured of the Evil, before they resolved to apply any Remedy, especially so desperate an one, thereunto.

Wherefore the wiser sorts Advice was, That they ought to inquire more narrowly and without delay into the thing, and to pursue such a Method as might give the Earls no offence, in case the Reports spread of them were false: And therefore their best way was, to manage it so as that they might come to a certain knowledge of their Designs, and oblige themselves to make an open discovery of their Intentions, concerning which there was such a sinistrous Rumour spread and Suspicion entertained among the People.

*Resolu.*

*Resolution.*

The Queen, having weigh'd the Counsels of each Party, resolv'd to write peremptory Letters to the Earls of *Northumberland* and *Westmorland* and others whom she suspected, whereby they were required to come to Court, as if their Attendance were required there for the good of the Government, which they could not refuse, unless they intended to rebel against her: And thus there was no doubt but the Government might come to know their Intentions: The common Report spread concerning them might be dashed to pieces by their prompt and ready Appearance, as they might clearly discern the Intentions they had of Rebellion, in case they delay'd and refus'd to come.

*Event.*

The foregoing Procedure manifested, that this Advice was good; for when the Earls did not appear there, upon their being required to come to Court, this plainly discovered their evil Intentions and Inclinations; besides, they were caught in the very beginning of their meditated Rebellion, and therefore might the more easily be quelled: For without this Advice, the Designs of the Rebels had not been known, unless they had made use of Garrisons and got together proper Instruments to make the same manifest; and, in that Case, they would have found it a Work of greater Task and Difficulty to prevent or Suppress that Rebellion.

*Judgment.*

The continual Designs of the Enemies of a Government make the constant Suspitions entertained  
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by those at the Helm concerning them, to be useful and necessary : Yet popular Fame is commonly the Mother of Suspicion, because it often mistakes, and for the most part makes way for Lies ; and so there is the same Necessity, Prudence and Conveniency in it, that they should not easily conclude upon any thing from these Suspicions ; and therefore they should make a narrow Inspection into the Truth of the Matter, by such Methods, as that they who are suspected may not think they are so, and yet the Suspicion, if true, be either confirmed, or if false, forth with they be obliged to leave it ; For, *Tacitus* says, by this means, those things, which we are afraid of while kept secret, are best brought to light : He that entertains any Suspicion, ought to remain in suspense while his Suspicion only remains. But because nothing can be done for the Government while they remain so in suspense, as soon as ever the said Suspicions are entertained, they are immediately to imploy their utmost endeavour to know the Truth : If there be any fear of the breaking out of a Rebellion, they who are suspected, ought to be called upon to do what is their Duty in a civil way and publickly, which they are enforced either to do or refuse ; if they refuse, why they are not then to entertain an uncertain Suspicion, but to go upon sure Counsels. Lastly, The Examples of two Roman Emperors, viz, *Tiberius* and *Vitellius*, ought to be the highest Caution for us in this Case ; for the first gave too much way to Suspicions, he prosecuted Falsties as if they had been certain Truths, and so was cruel and unjust towards his Subjects ; whereas the other, by giving very little or no way thereunto, was easily circumvented by the Artifices and wicked Designs of others.

C A S E

C A S E XXXVII.

*Whether, how and when may Princes or chief Magistrates for the Good of the Publick, lay Claim to the Goods and Possessions of private Persons, as Fields, Houses, &c.*

**T**HE Prætors of Rome being minded to furnish the City with Water from abroad, and to make Aqueducts for that purpose, *M. Licinius Crassus* put a stop to the Work, as being unwilling to let the Aqueducts be made through his Ground; it was therefore disputed in the Senate, what right the Prætors had over the Estate of a private Man, or what *M. Licinius Crassus* had to do in a private Concern against the Prætors.

*Opinions.*

Those who spoke for *Crassus* alleadged,

1. That Princes and chief Magistrates, possess even all that belong'd to private Men by way of Empire only, and not Dominion: By the first they had power to make Laws, by the rule whereof private Men were to manage their Affairs: But they have no right of Dominion, because every ones own Estate is not all's but every single Person in respect to the Thing it self; and therefore it would be looked upon to be not only Empire but Dominion in them, to force a private Man against his Will to alienate his own Estate.

2. Private Men would be always uncertain in their Estates, if Princes or Magistrates had always

ways power to alienate or lay Claim to them: But they were to consider it was the Interest of the Common-wealth, even according to the rule of the Civil Law, that the Estates and Possessions of the Subjects ought not to be held by them at an uncertainty; for if otherwise, the Industry of the Citizens would be lessened, neither would any one be brought easily to improve his Estate, when he had a constant fear upon him, that by the Magistrates Command, it was not long to be his but the Publicks.

3. For this Reason there were some Grounds and vacant Places reserved for the Use of the Publick, at the first building of Cities, that as occasion required, the Necessities of the Government might be supply'd and so the Houses and Lands of private Persons not meddled with, why then should the Prætors intermeddle with the Estates of private Men?

4. That the Aqueducts were made for Pleasure and Ornament, and therefore private Persons ought not to be imposed upon and forced to give up or sell their Estates upon that Account, for this was reason sufficient to excuse them, in case the Magistrates offered to strain their Authority to their Prejudice.

5. That it signified nothing for the Prætors to offer to pay *Crassus* for his Land, for the owner could not with any good face alienate them, and at the same time do it against his Will, for though others might judge there was a sufficient Compensation made him, yet the owner would by no means look upon it to be so, who many times would part with his Estate at no rate whatever; and *Crassus* was at that lay with them.

Others



Others offered their Arguments in favour of the Prætors, and stiffly alleadged,

1. That they did acknowledge Princes and Magistrates posselt all things in the Government not by right of Dominion, but Empire only, neither was that the matter now in question, for the Prætors exercised no Dominion in the Case, neither did they believe private Men's Possessions to be theirs, but designed to make them their own by paying a full price for them; and seeing private Persons had the Liberty to alienate their Lands to one another, why should not private Persons be obliged to satisfy the Government for the Publick Good? That private Persons did alienate their Estates to one another with their free Consent, because equals cannot exercise any Authority over each other: But on the contrary, such alienations may be allowed to be made between Magistrates that are willing to it, and private Persons that are not so, because Magistrates have a Sovereignty over the other. Though Magistrates could not do it in an absolute manner, but were bound to pay the price of it; because they can usurp no Dominion over private Men's Estates, and the Prætors went that way to work.

2. There were formerly Fields and publick Places assigned for the Use of the Government, but they were in proportion to the small Plans of the the City at the first Foundation of them; but now seeing they were enlarged, they might very well seek relief from the Possessions of private Men, especially, since whatever was done for the benefit of the Publick was done for the Good of every particular Person.

3. That private Persons owed their All to the Government, even their very Lives; and why  
not

not also their Fortunes? For he that owes the greater must certainly be meant to owe the lesser; and so much the more, seeing the price was offered *Crassus* and others for their Lands, and the Republick did not require them for nothing.

4. Seeing they were tyed to such and such Rules and Obligations in your City and Country Buildings and Demesns, that is, that they should not be a Nufance to other Men, nor built higher then so many Stories, and that Streets and Ways must be left for Passengers; So it seemed as if the Republick by a certain tacite Contract reserved this Power to it self and lay the Obligation on private Persons, that when ever there was occasion, Men's private Interests were to give way to the Necessities of the Government, but with as little detriment as might be to the Subject: That this therefore was an Obligation conformable to the Law of Nature and Nations, whereby the People were bound to serve their Country.

5. That the Value of private Men's Estates might be easily calculated, and the Method to satisfy for them was to pay the current price, that would have been given between Man and Man, with some addition made at the discretion of the Magistrates, in consideration of the Loss, which the Owner might think he sustained by being forced to sell: For it was not just, when a bargain was made with the Government, that the price of a finite matter should be extended *ad infinitum*: In such a case the contumacy of private Persons, and their unjust Valuation of their Estates, instead of being rewarded, ought to be punished.

*Reso.*

*Resolution.*

These things, tho' very plausible and special, did not prevail, but those Persons who spoke for *Crassus* carried their Point; not that there was nothing due to the Government from the Estates of private Persons, tho' the Owners, were unwilling to contribute towards it; but the Senators thought it of great moment to distinguish between a Matter that was necessarily done for the benefit of the Government to the inconveniency of private Persons, and a thing done for Pleasure and Ornament only; and they found that the Aqueducts, which the Prators would have made, seemed to be designed for Ornament and Pleasure, and no manner of necessity for them.

*Event.*

Wherefore the Prators gave over their Design, and *Crassus* was, by the Authority of the Senate, left to possess his Land unmolested.

*Judgment.*

The Authority of the Magistrate, in pulling down, changing or claiming a Property in the Estates and Possessions of private Persons, does not extend it self to the Pleasure of the Magistrate, but is confined to the Necessity of the Government; for the Authority so far is just, to require that then which they are necessitated to do; and therefore, in case of the Necessity of the Government, all private Mens Estates are to be made the use of so far by the publick, that an Equivalent is to be given them

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them for them: Those that did otherwise, the *Romans* prosecuted with utmost severity; for when *Publius Lentulus*, the chief Senator was sent into *Campania*, to buy private Mens Estates with the Government's Money, he sent back to the Senate to acquaint them, (as *Cicero* says against *Rullus*) That he could buy no Man's Ground for any Money: However, the Senate ordered the Land to be sold according to the Law of Nations, and without doing any Injury to particular Persons; and in case they had occasion for any private Man's Ground or Demesne, in order to the fortifying of a City, making Walls about it, for making of Ditches and High-ways, or building of *Forums*, they might, upon paying of the Price, be taken away from them against their Wills: For, seeing we owe our very selves and all that we have, as has been said, to the Government, if we do not make a Tender of them of our own accord, when there is occasion, a forced Sale of them is not the taking them away, but a reclaiming of them from ungrateful Persons: And this same Method has been constantly observed in *Holland* and the Frontier-Garrisons of the *States* and elsewhere. In the mean time, when these forced Sales are injurious to private Persons, the Prudence of the Magistrate can sometimes prevent their being so in a great measure, if by seasonable Orders they require that private Men should erect nothing upon their own Grounds, which must afterwards of necessity be destroy'd or demolish'd for the sake of the Government; and therefore they may very justly, yet cautiously, forbid the erecting of any Houses or Buildings in the Suburbs of Cities, which are like to be hurtful to the Besieged, but advantageous to the Assailants, where they are ever  
affraid

affraid of being invested by the Enemy. And thus the Inconveniencies which private Persons are liable to, may be prevented by the Prudence of the Magistrates, and for the rest it must be excused under the Covert of Publick Necessity.

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C A S E XXXVIII.

*Whether, how and when may we, in commencing and carrying on a War against others, build Fortresses upon our Neighbours Ground, who are not Enemies, or, for our security, possess our selves of their Frontier-towns.*

**V**When the War broke out in the *Netherlands*, between the *Spaniards* and *Dutch States*, the latter seized upon and possessed themselves by Force of Arms of divers Places belonging to *Cleve*, the Empire, and Electorate of *Cologne*, and built Fortresses, Castles and other Fortifications upon their Frontiers, about which Point there was a great Dispute made and many Embassies past between the Emperor, Dutchy of *Cleve*, Electorate of *Cologne*, &c. and the *States*; and the Dispute was, Whether they ought and it was just for them to do so?

*Opinions.*

Those whose Countries and Towns were thus seized by the *States*, argued the Fact was by no means lawful, alledging,

1. That they were Friends and Confederates, and therefore they ought not to commit any Hostilities

against them or in their Territories, though the same were done against others; for by this means they and their Subjects must be involved in the War.

2. That they had always continued Neuters in those Civil Wars between the *Spaniards* and the *States*, and therefore they ought to have the Benefit of that Neutrality, according to the Law of Nations, as long as they did not infringe the same; for the remoter their Case was from that of the *Dutch* and *Spaniards*, so far ought they to be exempt from the Injuries of War.

3. It was the part of none that was good and just, to invade the Dominion of another; that empty Places were only to be possessed; but if any were possessed by others, they could not be taken away, unless they had a just Cause of making War, whereof there was none in this Case.

4. From the seizure of their Cities and building of Forts upon their Ground, they might very well fear they were not safe, and that their Liberty was in danger: That they owed all good Turns to their Neighbours and Confederates, but that they could be driven or compelled to none; from whence it was manifest they could expect nothing but Injuries and Inconveniencies and that very soon.

The *States*, on the other hand, stood stiffly in their own defence, alledging,

1. That they very readily acknowledged those Neighbours to be Friends and Confederates, and that they had no thought of doing them any injury against the Peace that had continued between them; for neither was the Friendship or League between them and peaceable Neighbours violated, when an  
inno-



innocent Favour was sought and received from Neighbours; for what injury could that have in it? They proposed nothing to themselves, in their building Fortresses on their Neighbours Ground, but their own Security; neither had their Neighbours hitherto any room to complain of Injuries done them: Now that which is a benefit to another and a Neighbour, and does not hurt our selves, ought not or cannot be denied another by the Law of Nature and Nations; neither was the Peace of the Neighbourhood violated, when the neighbouring Cities were seiz'd by them, although they ought not to seem to be seiz'd; for the *States* possess them not as empty Places, but acknowledged them as the true and rightful Masters of them, though at the same time they were to be looked upon no less their Confederates and Friends; Why therefore should not the Soldiers of Friends be admitted? It's the part of Friends to have intercourse one with another, for the Troops of the *States* were for no other end put into the neighbouring Towns.

2. That they freely did acknowledge these Cities were neutral, in respect to their Masters; but that they were not and ought not to be esteemed so in respect to their Enemies the *Spaniards*, as being a People who would seize them with their Troops, and who, as they had a continual design to injure the *States*, would either not be commanded by the Masters to withdraw, or, if commanded, would not go from those Cities, when once possess'd of them. That the *States* could no longer own that Right of Neutrality, which their Masters were not able to maintain against the *Spaniards*: for so much Interest every Government is understood to have, as 'tis able to maintain: The rest is the Enemies, if

not by Right yet at least by Arms; for which reason the Weakness and Imbecility of a Neighbour-Nation or People, ought by no means to be a Prejudice to other Neighbours: If the People of *Cleve*, *Cologne* and the rest of them were able to maintain their Right against the *Spaniards*, why did not they do it? but if they could not, or neglected to do it, why should the Interest of the *States* suffer upon the account of their Weakness and Negligence?

3. That they did not invade the Sovereignty of other People; that all things remained entire for the Owners, to wit, the Sovereignty, Priviledges, Jurisdictions and every thing else: That two things were to be distinguish'd in a Matter of so publick a Concernment; first, the Dominion or Sovereignty of the Thing, which one cannot hold in common with another; and then what is justly pretended to and sought for as one's own by the Law of Nature and Nations in another's Dominion: Any one, saving the Right of the other, may justly claim his own in this Case; by which Right Passage ought not to be denied to the Soldiers of Neighbour-Nations, nor Commerce, which is peculiar to any People; but what Nature would have to be in common to all Nations, cannot be prohibited: And, lastly, Every one may hereby justly undertake the Defence of those Places in another's Dominion, by which he is apprehensive he may be injured, unless the same be both faithfully defended by the Owners themselves; and so far as is requisite for the security of their Neighbours: For one Neighbour is obliged to take upon him the Defence of such Places, when the other is not able to do it; and seeing this was the Circumstance of the People of *Cleve* and others, whatever

over the *States* acted out of necessity in such a Case, was for that reason just.

4. Seeing most of those Cities were seized by the *Spaniards*, and the same again taken from the *Spaniards* by the *States*, by the Law of War, they were not taken away from the right Owners, but unjust and unlawful Possessors; and yet the Laws of Neutrality, were by no means infringed by them: For the *Spaniards* either possess those Cities by the consent of the Owners, or they did not; if with the consent of them, they were not longer to be reputed as Masters, but even the Sovereignty of them seemed as it were by that Action to be transferred by them to another: This was not to be neutral, but to study Parties, and under that Notion they were invaded by the *States*, not as Friends but Enemies; if they did not consent to it, why should not the *States* revenge the Injuries done to their Neighbours? especially seeing the *States*, for the good of the Common-wealth, ought to look upon those Injuries as done to themselves.

6. If any of those Cities were yet free and not seized on by the *Spaniards*, seeing, from their possessing themselves of some of them, it might fairly be inferred, they had a mind to do so by all of them, why should not the *States* prevent their Designs therein, rather than be prevented themselves? This was a Matter always allowed by the Law of Nations, in respect to Governments: Private Persons cannot well be allowed to use Force, but against Force already offered; for to do otherwise would be interpreted culpable; but Princes and Nations were not obliged to wait for Violence to be offered them, for they ought in time to endeavour to prevent it for the Preservation of the Government, and that such was to be offered



them might be gathered from things of the like nature.

7. The Examples of the justest Nations, especially of the *Romans*, pleaded the Cause of the *States*, who invaded the Isle of *Crete*, for no other reason, than that they foresaw, as it was of convenient situation, so it might prove a benefit in time to their Enemies, if they were not prevented therein: Nay, they invaded *Britain* at first under no other pretence, but because they found the *Gauls* were supplied with a great many Men to fight against them from *Britain*.

8. It signified nothing for them to pretend, that what the *Spaniards* did in this Case was unjust: The *States* were not for having Wrong done, but for revenging of it. It was also to no purpose for the People of *Cleve* to pretend, that it was against theirs and others Wills, that some of their Cities were seiz'd by the *Spaniards*, for the *States* might very well defend them by the same Pretention: For seeing the *Spaniards*, contrary to the Will of the Owners, had possess'd themselves of some Places, whereby the *States* might daily be insulted and injured, the *States*, tho' much against their Inclinations, yet were oblig'd to follow the Example of the *Spaniards* herein, and to take care of their own Security.

9. Lastly, As they have no Action in Law against those Persons, who, for the extinguishing of Fire, destroy the neighbouring Houses, out of a just Fear, lest the Fire reach their own and others; so there is much more reason in a publick Matter, that concerns Princes and Nations, that a powerful Tyrant and Enemy, that bears hard upon them in War, be opposed, even by putting Garrisons into Cities of neighbouring Princes and States, tho' the same be without their consent.

Re-

*Resolution.*

Therefore, notwithstanding many Arguments alledg'd by their Neighbours, against the Practice of the *States* in this Case, yet they continued firm in their Design, and possess themselves of what Cities and Fortresses they thought fit and saw necessary for them, not with an intention to prejudice their Neighbours, but for the defence of their own Cause.

*Event.*

The Event was, that the Dominions of the *States* have for ever after been the more secured against the *Spaniards* Designs, by the way either of weak or negligent Neighbours, or such as under the Pretence and Form of a Neutrality, were hatching ill Designs against them; for they constantly prevented the Irruption of the Enemy into their Territories that way.

*Judgment.*

Seeing what belongs to others, as well as our own, are partly to be used for the good of a Nation and Government, we think the Lands and Cities of Neighbours, tho' they be Friends, may be seiz'd on in the manner already mention'd, not for to injure them, but out of a necessity we are under of defending our selves: And those things which belong unto others, are upon a equal foot with ours in Matters that imply a necessity in them, according to the Law of Nations, a present Necessity, and, lastly, a Benefit that is innocent and without

out offence: Now Necessity, according to the Law of Nations, is, that Trade, Marriages and the like be allowed; and therefore the *Romans* justly supplied themselves with Wives, tho' against the Will of their Neighbours. The next is, to have Passage thro' a neighbouring Country, which cannot be so denied, but that the same may be justly opened and made by Arms. An innocent Benefit is, whereby we desire our Neighbours to bestow upon us, and that most justly too, those things, which as they are beneficial to us, so are of no injury to our Neighbours. Tully says, *'Tis an unjust thing to deny another that which is not injurious to thy self:* Which is so true, that it ought not even to be denied Enemies. And Seneca declared, *Such Kindnesses ought not to deserve the Name.* Wherefore, when there is an Opportunity and Necessity for it, Fortresses may be built in a peaceable Place or seiz'd on. Lastly, It is the part of Magistrates to be affraid of every thing that may injure the Government, tho' all seems to be safe: And therefore whatever the Enemy may do in our Neighbour's Country, wherein we may be damnified, it's lawful for us to prevent it; for, if the Government may be injured from abroad, it ought not only to be relieved at home but abroad also.

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C A S E XXXIX.

*Upon what Manufactory it's advisable to lay an Imposition, and upon what not.*

**T**HE *Neapolitans* are very industrious in gathering and weaving of Silk, and a great part of the People are imploy'd in that Manufactory; so that when formerly the King of *Spain* would lay a new Imposition upon the People, it was debated in the Vice-Roy's Council, seeing there was so great a Plenty of Silk in *Naples*, and the same was used very much by Foreigners, whether it were not best for them to lay a Tax of a *Carolus* upon every Pound of it.

*Opinions.*

Some alledged they might easily raise a great Sum of Money by it, seeing there was no Manufactory more used or trafficked in than the Silk of *Naples*; but that all Impositions signified nothing and would not answer the Charges and Labour of Collecting, unless they amounted to a considerable Sum.

2. That the Burden of Customs ought rather to be laid upon Foreigners than the Natives; for the Natives must advance the Price of their Silk, because of the Impost, which the other were bound to pay because they could not be without it.

Others there were who opposed this Opinion, and used this as their chief Reason, That when  
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*Manufactory whether to be taxed.*

the Price of the *Neapolitan* Silk was raised, by reason of the Duty laid on it, their Trade, which was now in a most flourishing Condition, would be stopt and totally ruined; for, seeing there was the same Plenty of Silk to be met with in other Parts, which being free from paying Custom, must therefore be sold cheaper, Foreigners would for the future rather chuse to fetch it from thence than from *Naples*.

*Resolution.*

After many Debates and Arguments upon the Subject, the first Opinion prevailed and was executed accordingly.

*Event.*

This was attended with very ill Success, for foreign Merchants presently went to buy Silk in other Parts, where they could have it cheaper, whereby the Trade of the *Neapolitans* was interrupted, which, in case it had still flourish'd and no Imposition laid thereon, the *Neapolitans* had daily increased in Wealth and Estates, which they might have taxed much better in time than to raise Money upon their Silken Manufactory.

*Judgment.*

The Native Commodities and Manufacturies of Countries, which Foreigners want and cannot be fetch'd from other Parts, may be ordered to pay Custom, according to the Wisdom of the Government; but things that can be fetch'd from other Places should not be so charged; for if so, then  
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the Trade is drawn elsewhere, to their Prejudice and Loss.

Something of this nature hapned formerly between the States of *Holland* and the King of *Poland*; for when the King had resolved to lay an heavy Imposition upon the Goods which were carried to the Ports of *Danzick* and *Pillau*, the chiefest of which from *Poland* was Corn: The States resolved to go and fetch what Corn they had occasion for from *Muscovy* and other Parts; and therefore, unless they would consider and desist from continuing their Impositions, the chiefest Trade of *Poland* and *Danzick* would be interrupted and turned another way.

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C A S E XL.

*When Tumults are raised by the Soldiery for just Causes and Grievances, are they therefore to be thought exempt from Punishment?*

**L**EWIS the Thirteenth of *France*, after the taking of *Rochel*, commanded a general Review to be made of his Armies, when some of the foreign Soldiers began to mutiny and lay violent Hands upon their Commanders, because they had been cheated in their Pay by their Officers; now some of the Mutineers were seized and imprisoned, and therefore it came to be debated in a Court-Martial, what they should do with them upon this Occasion?

*Opini-*



*Opinions.*

Some were of opinion, that their unjust and covetous Officers were rather to be punished than the Soldiers, who required only what was due to them, seeing 'twas their Injustice that had occasioned the Soldiery to demand it in a tumultuous and disorderly manner, when no other Way would do it.

Others opposed this, saying, The Question now was not about what the Officers had done, whose Cause should be examined and tried by it self, but what the Soldiery had committed; that they at least raised a Tumult, sought their own after a wrong Way and by an Example that was injurious to the Publick; and, lastly, had usurped the Publick Authority of the Government. To this they added, That it behoved every Government, and it was its Interest, that no Commotion should be made against and Violence offered to Magistrates in the discharge of their Duty, without punishing the Offenders, though the same Magistrates had elsewhere and at another time offended: For if that was once allowed, as often as any Magistrates were in any manner guilty of any Miscalriage, so constant must the Contumacy and Rebellion of the Subjects be. Neither could the Cause here be alledged to be just, seeing they had no reason to disturb the Publick Tranquillity: In Judicial Proceedings, the Plaintiff and Defendant's Right and Wrong were weigh'd and considered; that the Method of Administring publick Justice was overthrown in Tumults; that this deserved to be punished in them, let the Cause of the Tumult

mult be looked upon to be never so just: That a thing is made good and just, or bad and unjust, if one's Right thereto be prosecuted by unjust Methods, and something in this Case ought to be considered as just, and something otherwise.

Just in the Cause, and therefore the Officers were to be enjoyn'd to satisfy the Soldiery, as to their just Due, and the same unjust Officers were in due time and place to be punished according to their demerit.

But unjust in respect to the Commotion and Tumult raised by them, and therefore the Offenders ought to be punished; for they were not now to consider, why they were such, but only such in reference to the Government.

### *Resolution.*

They agreed to this Opinion, that so both the Soldiers might be satisfied and yet the Discipline of War preserved; satisfied, so that their whole Pay should be given them, and Military-Discipline preserved, lest there should be Punishment wanting, where a Crime preceded.

### *Event.*

The Ring-leaders of the Tumult were punished with utmost Rigour, without any Disturbance; for by the same Order, whereby a Punishment was inflicted upon the Criminals for raising a Tumult, the Causes of Commotions were removed at the same time.

*Judg-*

*Judgment.*

The justest Cause of a private Man and Subject is unjust, and therefore deserves to be punished, when any one prosecutes the same to the detriment of the Government: And indeed it has been a received Rule amongst most Nations, and well thought of for the Preservation of their Governments, that Subjects are not to form Accusations against those, who now not only discharge the Office of Magistrates, but at present do also expedite what is incumbent upon them in their Stations, much less are Tumults to be raised against them, let the pretended Reason be what it will, they are to acquiesce.

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CASE



## C A S E XLI.

*By what Means are those Evils, which cannot be removed, to be restrained and made less by good Laws.*

**I**N the Reign of *Francis I.* of *France* while that Kingdom hapned to be afflicted with some Domestick and Foreign Wars, the Corruption of Manners did so prevail among the Soldiery, that whether they marched into their Campaign, or retired home to their Quarters, they made a terrible Ravage where-ever they came in City or Country, and brought the People to Beggary. For which Reason it came to be debated in the States of the Provinces, by what Counsels or Methods such vast Damages that threatned no other than utter desolation to the Country, could be hindred, and for the future prevented.

*Opinions.*

Some thought it best to make an agreement with the Officers, that the Soldiers should be under such and such certain Limitations, and exceed no further.

1. For they had hitherto made bold with every thing without controul; but when such an Agreement was once made, they would be restrained to certain things; that this would either be a Remedy or a Comfort to have Evil (which would increase almost *ad infinitum*) restrained within certain bounds, if this could be done for the Authors of it.

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2. By this means the Damages sustained by the Provinces would be equal, each of them be obliged in proportion to their Wealth and Estates, to bestow somewhat towards the maintenance of the Army; for all publick Societies have this disposition, as to make both Fortunes too Common to them all, who have met to Constitute and cultivate the same.

3. Seeing the Licentiousness of the Soldiery is as it were the effect of and a punishment arising from Civil and Foreign Wars, it is much better to know what Punishment at least the people are to endure, than to find all kinds thereof inflicted upon them.

Others on the contrary, thought the Course now proposed was not safe; and alledg'd,

1. That they owed the Soldiers nothing, whose Pay by how much the more certain it was, by so much the safer ought the Estates of the Citizens and Country-men to be from them under such Circumstances.

2. That they ought not to make a thing lawful by Agreement, which before it was always Esteemed unlawful and unjust: As long as it remained unlawful to spoil the Goods of the People, those that were good would sometimes abstain from it, or act more gently with them in that respect: But where the thing was made lawful by mutual Agreements, then the Good, as well as the Bad, would in pursuance to the Articles of the Agreement, insist upon what was their due, as a matter of Right.

3. That it would not be an easie thing to put a stop to the Licentiousness of the Soldiery; those that were unjust, and Oppressors before the Agreement was made; Why should not they be thought to remain so after it? And therefore,  
these

these Inconveniences ought to be redressed or lessened by the strickness of Military Discipline, and the care and endeavours of every particular Person.

*Resolution.*

A great many resolved, and that prudently enough, to stand by the former Opinions; but others thought fit to make Choise of this latter Method.

*Event.*

Those of the greater number, as they preferred some certain Inconveniences before those that were uncertain, yet amidst those Inconveniences and Losses, still reserved somewhat for themselves; while the rest who preferred uncertain Losses before those that were otherwise, were at length deprived of all they had, and became Beggars.

*Judgment.*

When the necessity of the times and difficulties of things are such, that they cannot find a remedy totally to take an Inconveniency away, it is a Conformable, and the most commendable way of lessening it, rather to restrain the same by Laws, as it will bear, than to permit the Evil wholly to pass uncurbed without Controul; for otherwise it will be found to have no bounds: Why therefore in such a Case should not that be esteemed the best Law which tho' in some measure it does tolerate Evil, yet at the same time curbs and restrains it? for if it be thought best for a private Man to deliver part of his Fortune to an Highway-man, in-



to whose Hands he has fallen, in order to the saving of his Life, why should it not be thought advisable in a Government, wherein the Military Licensiousness of the Soldiery seems to be a kind of Robbery, to agree rather to indulge some part of their Substance to them, than to leave all to their Discretion and Humour, who without there be such an Agreement would think all to be their own?

## C A S E XLII.

*When is it in publick Negotiations, that strict regard is to be had to the wording of Things, and of what moment the same is to a Government?*

**T**He Imperial Embassadors, in former days, sent into *Holland*, having offered their Credentials to the States, the Titles whereof were either not rightly set down, or conceived wrong, especially seeing the same run *To our Faithful and Beloved*, as if they were Vassals to the Empire: It was after Debate between them, queried whether it were agreeable to the Power and Figure of the Republick to receive and open those Credentials.

*Opinions.*

Some thought they should make no scruple of receiving them, and argued that an Embassy ought not to be frustrated for trifling Words.

1. For the Form used therein was such, that it might signifie somewhat else, according to a favourable

vourable Interpretation, than the dutiful Subjection and Obedience of Vassals; for why should not they be glad to become the Beloved and Faithful Friends of the Empire, with which they had Wars? The Form might be admitted upon Condition of the safety of the Government.

2. That the States had often received Letters from other Foreign Princes, especially of the *East Indies*, that were not so exact in their Supercriptions, and yet not rejected by them; why therefore should they now be so solicitous and nice in enquiring into the Emperor's Supercription upon this occasion?

But others differed very much in their Sentiments from the former, and said,

1. That that Form could be taken in no other Sence, than as it Denoted the Subjection of a Vassal, and that it was not their Business now to mind according what favourable Interpretation the States might receive or explain it, but what the same meant when the Emperor made use of it. That Words are divested of their proper meaning, and put on some other Interpretation, where they are adapted to some solemn Form of publick Business. So a Prince, who ever he is, is a Prince *Dei Gratia*, and any Prince in that respect may be termed so; but in the mean time Religion and the received sence thereof among Princes and Nations, have reduced the use of it only to those Princes who have a sovereign Dominion and are liable to no Superiors: And so, Princes, according to the Rule of the Feudal Law, only call their Vassals, *Faithful and Beloved*. But the States-General were none of those.

2. Now as to the Letters or Credentials of the petty Kings of the *East-Indies* and others, which the States received and opened, in which they either

ascribed too much or too little to the States, they were not therefore to be rejected; for whatever deficiency was in them, that did arise from their Ignorance of our Forms, and not from any Malignity or Contempt: The Event therefore testified that they had no deceitful and ill Intentions therein: But as to the Emperor they were to think otherwise of him, who, during their Civil Wars, discovered his Mind constantly unto them upon this Head, and tho' his Embassies were often rejected by reason of the said Form, yet he persisted still therein. He that is of an Hostile Mind, and thus obstinate, as often as he offends, discovers not ignorance, but a Contempt of the States, and a malignity of mind and intentions.

3. It was true, that Words could neither injure nor defend them, when the matter was to be managed with Hands, but on the other Hand this must do much Hurt or Good at another time to the dignity of any Government; for 'tis a Property belonging to Government, that it be always acknowledged the same, as 'tis in it self and its Power, both in respect to Words or Writing; for in case it should receive and admit of any Thing that is beneath its Dignity, this would be nothing else, but by its own Confession to make it self less than it is, and only to cut its own Throat: That in publick Negotiations wherein the least Things as well as greatest are minded, that Matter is taken for true, granted and just with every Magistrate who does not contradict the same. A private man who subscribes a Contract, which he did not well weigh before hand, and wherein he finds afterwards some Things inserted that he neither thought nor meant, must be tyed to the performance because he has subscribed; and why should not Magistrates use that wariness, as to examine

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BRITANNICVM



amine and discuss those Forms, wherein such Things are contained, which others rashly and falsely suggest against the Republick.

4. If no Change ought to be made in solemn Matters, the same certainly when they are changed or corrupted ought by no means to be allowed of; they might see how exact the *Romans* were in that Case, seeing it was a Custom that those Letters which were writ to the Emperors or Senate, among other things should contain these words, *Pro eorum & Reipub. aternitate*, for the Eternity of them and the Empire: nay 'tis observable that *Tiberius* would not receive but sent back the Letters directed to him from the Provinces, wherein those wishes were left out, for they took the *Roman* Majesty to be as it were despised thereby.

5. That this took place in a more especial manner in those forms wherein the Titles of Princes or States were expressed; for so much is every one and so he makes himself to be esteemed of others, in proportion to what he allows himself to be called; and if Princes for their Glory, or in pretension of Right, retain those Titles, which at present they are not possess of; why should not Magistrates in a more especial manner, and without intermission, lay a claim unto that, wherein the foundation of their present Dominion does consist; There is nothing in this Case so inconsiderable as to be neglected by the greatest Empire: Whatever is here neglected is lost; nay when an opportunity is offered he will always do that against a Person, that is once received and allowed of.

*Resolution.*

They therefore agreed not to open the Credentials, but to send them back sealed to the Embassadors;

fadors; adding, That they were not directed to the States, for they did not acknowledge themselves to be *The Faithful and Beloved* of the Emperor and Empire in such Forms.

*Event,*

Upon the rejection of these, other Credentials some time after were presented by the Imperial Embassadors; which as the Superscription was right, so they were kindly received.

*Judgment.*

We are not to squabble much about Words, when the Matter is right, for such Subtilties are many times dangerous and an hindrance to the dispatch of Business; but yet in publick Affairs Words are not rashly to be past over, when they stand in stead of things; as in Embassies, where 'tis an usual Custom to esteem any Nation or Prince, according to their Power and what they are; and lastly in publick Letters, their Superscription is null, and are concluded to belong to no Body, when every ones proper Title is not given him: And this ought the more diligently to be attended to, in respect to those whose Sincerity is doubted.

## C A S E XLIII.

*Of a Peace to be made with a Foreign Enemy,  
and whether the same be proper at all times?*

**T**He *English* having been engaged for several Years in a War against *Spain* in the reign of *Q. Elizabeth*, to the great Consumption both of Blood, as well as great detriment to their Trade into *Spain*, which was always very beneficial, tho' to the great Glory of the *English Arms* both by Sea and Land; and the Queen finding that *France* by the Peace of *Vervin* began mightily to flourish under *Henry IV.* She began also to think seriously of Peace, for which end she sent *Sir Francis Vere* in 1598. into *Holland* to know whether the States would join with her in a Treaty; and in the mean time the Matter was accurately debated in *England*, and the Question was whether it would be for the Benefit and Advantage of the Queen and Government to make a Peace with the *Spainard*?

*Opinions.*

They who were for the Peace took upon them to produce their Reasons, and urged the following Arguments.

1. That Peace, besides that it was both sweet and beneficial, would wipe off that Aspersions which lay upon the *English* as being the Disturbers of the whole World, as if they were happy in other Men's Miseries, and safe and quiet by other Men's Dangers.

2. The



2. The Queen would be more secure from treacherous and desperate Attempts.

3. There would be an end of the Expences of the War against the *Spaniard* and the Archduke.

4. The Irish Rebellion would be suppressed, when the Rebels should have no longer hopes of succour from *Spain*.

5. Commerce and Trade would be more free and open to the great benefit and Advantage of the Queen and her Subjects; *Spain*, which in old times had been so beneficial to the English Merchants, would be again opened to them, where they might exchange Wheat for Gold and Silver; And the Emperor's Mandate against the English Merchants in *Germany* would be recalled.

6. All dangers of Tumults at home, occasioned by frequent Taxes, and Levies of Men, would be avoided, and the League of *Burgundy* would be renewed and so there would be no need to fear the French King: *England* also would take Breath, and lay up Wealth for future occasions.

7. Again, it would tend to the Q.'s Honour, who in the year 1585. seeing when the States of the Low Countries offered her the Sovereignty of those Provinces, she publicly protested and declared in Print, That in delivering the *Netherlanders* she aimed at nothing else but Liberty and Peace for them and security to *England*. If then it seemed a Resolution full of Wisdom and Discretion, as the times went, to relieve the *Netherlanders*, and full of Justice to refuse the Dominion of those great Provinces, when offered her to bear the Charges of the War, it would certainly seem now a point of extream Folly to prosecute the War, when the *Spaniards* offered a Peace, and nothing was offered by those who so much desired the Continuance of the War.

Others

Others also urged over and above these Things.

1. Whether *England* was able to carry on the war against the *Spaniard* in *Ireland*, the *Low Countries*, and elsewhere, and whether there was any hopes by continuing the War to bring him to more reasonable Terms of Peace, than what now might be had.

2. They were also to consider well, seeing doubtless it was most expedient for the *English* to carry on an offensive War, for (Woe to them who were forc'd to defend themselves at home) on what Parts this War was to be made: If on the Sea-Coasts of *Spain* and *Portugal*, the Maritime Towns might indeed be ransacked and taken in both Places, but never kept without a vast Charge, without any Profit at all: If in the Isles of *Azores*, these also, 'twas true, might possibly be subdued, and that to the great detriment of the *Spaniard*, but could not be kept without greater Expences; If in *America*, they had now Ships of force every where ready in those Parts, and the Sea-Coasts were provided with more and strong Garrisons, than heretofore; and not a Grain of Gold, Silver or Pearl was to be hoped for without great hazard: If in the neighbouring *Low Countries*, that would be a very difficult Task, so thick was that Country of strong Towns, every one of which would sustain a Siege; neither could the *States*, in conjunction with the *English* Forces, make any other than a defensive War of it, 'till such time as the *Spaniards* were diverted by the French War.

3. The Axiom in Politicks was not to be neglected, that they who were able to maintain a War, might find and obtain a Peace; but they who were not able, never should; and they alledg'd

ledg'd the lamentable Examples of the *Athenians* and others for it, who refused Peace when it was offered them.

4. Lastly, Some insinuated, that the States, whatever Pretences they made of defending Religion and maintaining their Liberty, did indeed take away all Religion and Piety, by tolerating every Opinion and Persuasion except that of the *Romanists*; and for Liberty, they sought nothing else but their own Profit and Advantage, by imposing great Excise upon Victuals, debasing and corrupting of Coin, raising the value thereof at their pleasure, and the like cunning Practices; and hereby they did by a strange piece of management maintain the War, and by the War grow rich, whereas all other Nations were impoverish'd thereby: Farther, they hindred all others of Trade and Commerce by setting up of Monopolies every where; and as all others did that favoured a Democratical Government, they prosecuted Monarchies with a tacit and secret Hatred, and had rejected all their Nobility, save one or two that were of use to them in the Wars, and it was evident they propounded nothing else to themselves (which was a very dangerous Example against Princes) but to do as the *Helvetians* had formerly done before them against the same House of *Austria*, wherewith they had now to do, and that not with their own Blood, but with that of the *English*, *French* and *Scots*, who for a little Glory were so prodigal of their Lives in the Cause and Quarrel of other Men.

But to these Arguments for the Peace, others who were stiff against it replied, and said,

1. That by the Peace the *Spaniard* would heap up such a Mass of Treasure, that if he brake out into a War again, he would be far too strong for all his Neighbours.

2. That



2. That a sound and firm Peace could not, without the Pope's Dispensation, be expected at his Hands, who had deluded the *English* at *Bor-  
bourg* in the Year 1588. and was of a belief, that no Faith was to be kept with Hereticks and excommunicated Persons, and that he could never digest the Losses he had received, but would be inflamed with a desire of Revenge.

3. If a Peace were made, the Queen must forsake the States of *Holland* and *Zealand*, and withal lose her Money expended upon the War, or else give up the Cautionary Towns into the Enemies Hands, which would redound to her Dishonour, as the other would to her Loss and Damage.

4. The States, if once forsaken by her, would be reduced under the Obedience of the *Spaniard*, whereby he would become far more powerful in Shipping and Forces to infest *England*, and those Countries would be a very convenient Seat for carrying on a War against the neighbouring Kingdoms, in order to his erecting and establishing the *Spanish* Universal Monarchy.

5. Supposing that an offensive War in the *Low Countries* was a difficult and hard Task, in the *Azores* doubtful and uncertain, in the Maritime Parts of *Spain* and *Portugal*, fruitless and unprofitable, and in every one of them very chargeable and expensive; yet in *America* it would be highly advantageous and profitable, which vast Country was so thinly Peopled by the *Spaniards*, and those Inhabitants so far separated, that they could not easily relieve one another: If therefore an Army of ten thousand *English*, under an industrious and vigilant Commander were landed there, with a resolved purpose to plant and inhabit, it was not to be doubted but *Carthagera* in *Castile d'or*, the  
River

River *Giagro*, which was able to bear Boats almost as high as *Panama*, and *Porto Bello* would be all taken, and consequently the Treasure which was sent through those Places into *Spain* out of *Peru* and *Castile d'or*, would be either intercepted or kept in *America*, whereby the Trade of the *Spaniards* might be stopt and hindred, and the King's Custom diminished to his great loss and detriment: Neither would there be any fear of the *Americans*, a Cowardly People, and through the pleasantness of the Climate rendred altogether effeminate; or of the *Spaniards* who should be sent thither, who being fatigued with the length of the Voyage, and made feeble with Sea-Sickness, would find it a very difficult matter to drive old Soldiers out of their strong Holds. Neither needed they to fear the want of Victuals and Ammunition, where-with they might be as easily supplied from *England*, as the Enemy were from *Spain*; for as soon as some should give out, that they had settled themselves there, many People from all Nations would flock to them with all sorts of Necessaries, forasmuch as the *Europeans* desired nothing more than a free Trade and Traffick into *America*.

6. As for what was objected against the *Hollanders* concerning Religion and Monopolies, they were meer Calumnies and Forgeries of the Adversaries of the Reformed Religion; for the States, together with their ancient Liberty, did from their Hearts embrace the Reformed true Religion, and maintained the very same with the other Reformed Churches of *Christendom*, in fundamental Points, which concerned the salvation of Souls: In other Points not necessary to Salvation they granted a Toleration, with respect to the times, in the same manner as the Primitive Church did, for as much as Cockle would every where grow up

up with the Corn: And as for other Things, the faults of particular Men were not to be charged upon all in general, the publick Cause being to be distinguished from private Men's miscarriages: Among the Angels of God and the Apostles themselves, there was some Corruption to be found: We were not to envy nor defame a well-establiſh'd Common-wealth, nor that excellent Industry and good Husbandry of a free Nation, if they only of all People knew how to thrive and grow rich by War.

The others who were eager for Peace, rejoined and said,

1. That the Queen and her Confederates might in like manner gather up Treasure in time of Peace, and provide themselves no less for Defence, than the *Spaniard* could for Offence; that a solid and firm Peace might very well be expected from the *Spaniard*, who having hitherto sustain'd very great Damages and Disappointments, might learn at length how much he had mistaken in his Government of the *Low Countries*, by a martial and forcible Hand, and might seriously now rectify his Error by agreeing to a Peace; and that Peace had several times been made heretofore, with the Dukes of *Burgundy* and Kings of *Castile*, the *Spaniard's* Predecessors, and had always held firm, and been extremely advantageous and profitable to the *English*.

2. Suppose the King of *Spain* for his advantage had treated of a Peace at *Borbourg*, not with that fairness and candiness he ought to have done, we in like manner might now without any Injury to our selves treat with our Swords in our Hands.

3. That Peace had been kept by Popish Princes with Excommunicate Persons and Hereticks, with-  
out



out any regard to the Pope, might be proved by many Examples, both of *Charles V.* and his Successors in the Empire, who still kept their Faith and Promise with the Excommunicate Protestants of *Germany*, whom they accounted Hereticks; of *Francis I.* King of *France*, who at *Paris* solemnized the Funeral Obsequies of *Henry VIII.* tho' excommunicated by the Pope, and of *Henry* the then King of *France*, who after he was reconciled to the Pope, and acknowledged for the eldest and dearest Son of the Church, entred into an offensive and defensive League with the Queen of *England*: The ardent desire of Revenge grows cold, when Strength to act once faileth.

4. The Queen might justly forsake the States, since she only obliged her self to assist them, till such time as they could get reasonable Conditions from the *Spaniard* for securing their Liberty, which Conditions, if they now refused, she was not bound to assist them any longer.

5. That the Cautionary Towns should be surrendered up to them, was neither just nor could they with reason require it; that the recovery of the Mony disbursed upon the War, would be easy, if a Peace were once concluded.

6. That the States could not in a short time be reduced by force of Arms under the Obedience of *Spain*, and in process of time many Things might happen, which were not now thought of, but if they were reduced by a Pacification, they could not sufficiently secure themselves, unless they also secured their Profit and Interest. But whatever became of them, *France* and *England* being now linked together in a firm League, would easily ballance the *Spaniard*, and prevent his Extravagancies; the common Interest would be the strongest Bond of the League.

7. Lastly,

### Resolution.

*Event.*

A new Contract was soon after made with the States, which did abate and take off a great deal of the Charge of the War on the *English* Part; for the *Dutch* agreed to pay the Queen 800000 Pounds Sterling, viz. 30000 Pounds yearly as long as the War continued against the Common Enemy, until 400000 Pounds were paid, and if a Peace were made betwixt the *Spaniards* and the Queen, there should be paid of the remaining Sum yearly 20000 Pounds.

Pounds, till the 800000 Pounds were paid; that the *English* in Garrison in the Cautionary Towns of *Flushing*, *Briel*, and the adjoining Forts should be paid by the States, and if any of the *English* Isles were invaded by the *Spaniards*, the States were to assist the Queen with a certain number of Men, and with an Equal number of Shipping with the *English*; as the *English* Forces sent over into *Flanders* were to be joyned with an Equal number of *Dutch* Troops, &c.

### Judgment.

It's no doubt but the Animosities contracted between *England* and *Spain*, and increased almost into an habit by the Continuance of the War, had a great share to determine the *English* Council to enter into the fore-mentioned Resolution, and might be a means to Postpone divers good Reasons of State which powerfully inclined the most sedate of them to the contrary Opinion. Neither was the sincerity of the *Spaniards*, notwithstanding his seeming forwardness now, and afterwards his successor *Philip III.* to be much relied on, since the Treaty set up at *Bologn* in *France* in 1600. was broken off by the *Spaniards* so abruptly, after the *English* Embassadors had made so fair Concessions to accommodate the Point in difference about Precedency.

CASE



C A S E XLIV.

*After what manner, upon a Sedition of the People (whose Petitions are unjust or unseasonable, by reason of some Decrees made in favour of certain Subjects) may the said Sedition be presently appeased and suppressed, with their Safety and that of the publick Authority?*

**I**N the time of the Civil Wars in *France* about Religion, the Parliament thought fit to make a Decree, whereby the Ecclesiasticks and others in Holy Orders were exempted from paying any Taxes imposed upon the Subjects because of the War. Upon this the People in *Paris* grew tumultuous and ran to their Arms, furrounded the Court, and exclaimed against the unjustness of the Decree, saying, they would never endure that the Clergy should have the Benefit of it, for whose sake and by whose instigation the Civil Wars were begun, and who for that Reason ought most of all to bear their share of the Burden of it.

The Members of Parliament hereupon entred forthwith into a Consult, what was best for them to do upon such a Commotion of the People.

Some were for punishing very severely the Authors of the Tumult and so appease it that way; but others opposed this, and alledg'd it was unseasonable at that time to think of inflicting Punishments which must tend to the detriment of the Government; that punishment could not be inflicted on them without the Authority of the Magistrate, but that now when there was a general Tu-

mult and Sedition, the Authority of the Magistrates was not sufficient for it: And therefore they were now chiefly to mind this, that they should introduce Prudence into the place of disabled Authority, by which alone, if they acted warily, they would get the better.

Others therefore were for repealing the Act made in favour of the Ecclesiasticks; but this Advice was opposed by a Contrary Party, and Arguments given against it; for they said,

1. By that way of procedure the Authority of the Court would be exposed to Contempt: For if once they revoked their Decrees in favour of the Common People, they would continually be exposed to the same Inconveniencies and others also.

2. They added, that to pursue that Advice was no other than to sow Evil from Evil, and to appease present Tumults by raising of fresh ones; for the Clergy would not brook patiently that they should be thus forsaken, and the Act made in favour of them rendered of none effect. And wherein was the difference, whether the Clergy and their Faction raised a Tumult, or the Common People? And therefore a middle Course, and such as might be pleasing to all Parties was taken, that an Order should be then made and openly publish'd, whereby the Clergy were summoned to appear at a certain day at *Paris*, by which the People were fed with hopes, all Matters would forthwith be settled with the Deputies of the Clergy in the Convocation to their satisfaction.

### *Resolution.*

This last Advice they all agreed to, and proceeded to the execution of it.

*Event.*

*Event.*

Things hapned according to their expectations; for all Parties were at present satisfy'd with the Decree, the main Business now in hand, being to take away the Cause of the Sedition: The Magistrates were satisfy'd, their Authority hereby remaining entire, and the Common People were pleased, being now full of good hopes, as if they had already obtained, what they sought for: And lastly the Clergy were satisfy'd, seeing the Exemption and Priviledges they had granted them remained yet firm and not violated,

*Judgment.*

Now in tumultuous Times when the Mobb is strong, and the Power and Authority of the Magistrates but weak, which yet ought not to be prostituted and give way to the Licensiousefnefs of the Multitude, recourse must be had to moderate, close and specious Counfels, and those are such whereby Matters are put off; the granting or refusing of which to the People would be equally dangerous, and yet great hopes given them of success in their Demands and Pretentions: For the nature of the Mobb is commonly such that they cannot for the most part discern the Shadows of Things from the Things themselves, that they always interpret the hopes given them in too large a Latitude, and lastly that they embrace what the Magistrates promise them by way of future hopes, as if the same were firm and certain; for they measure future by present Things. Finally when the decretory Counsel, as they call it, cannot at present be put in execution, that is to be reputed  
P 3 best,



best, whereby Mutineers are hindred from laying hold of the present opportunity for injuring the Government, and a way is opened for the more convenient execution of the Magistrate's Orders in time to come.

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### C A S E XLV.

*What Method of Equality is to be found out between a People that are unequal in Situation and Power, who yet as Neighbours ought to unite in one League?*

**W**Hen Holland, Zealand, Gelderland, and the rest of the Provinces of the *Low Countries*, which afterwards confederated into one Republick, by the Title of *The States-General of the United Provinces*, &c. were about to make that Union, they entred into a warm Debate, how so many Provinces of such unequal State and Fortune could coalesce into one Body by one League upon an equal foot.

#### *Opinions.*

Some objected the Example of their Ancestors, as is usually done, and said that the Controversies of some of those Provinces were not yet decided, which as long as the same lasted and were kept up, they could not easily hope for or expect their Union could be stable and durable: But others opposed them, and would have the state of those Controversies to be remitted till more peaceable times; for the Face of Things was chang'd, it was not now for private Persons to quarrel about a Right they

they pretended to from others, but they were to Fight with their Swords in Hand against their Enemies, for the preservation of the Rights and Liberty of all of them, which being happily accomplish'd, they would have time to consider of the rest; for 'twas to no purpose for private Men now to be litigious about Matters, which while the same should be controverted in Law, would be exposed to the Licentiousness of their Enemies, and so all Lost.

Others objected, That the Fortune of the Provinces was too unequal; That those Provinces which were more powerful than the rest, would thereby become so much the weaker, if they were bound by their League to assist the weaker.

But others made Answer to this, That they were not now to consider, which Province was the stronger, and which was otherwise, but how equally miserable they would all become without they assisted and stood by one another; and therefore the more powerful Provinces were seriously to consider that they were not so much about to help the weaker ones, as they were necessarily to be assisted in the weaker ones; but they were to remember that their Power was not so much lessened by giving aid to the weaker Provinces, as that the same was increased and preserved by the least struggle and endeavour made by them, how weak soever they were: Neither was it now a time for the stronger Provinces to set their Power against the weakness of those who were to be united into a League with them, but against the greater Power of the Common Enemy, in respect to whom, the Power of each single Province, be it what it would, was nothing, nay it was to be looked upon no other than a sort of Weakness and Defect not worth taking notice of; but when every sin-

gle Province was united, they were all together strong: Great Armies, if lead against those that were greater, were strengthened by the conjunction of one Regiment; those Provinces which were Situate on the frontiers were continually exposed to the Incursions of the Enemy, as *Gelderland* and others which were always subjected to the Inconveniencies of the War, and the occasion that the rest of the Provinces were in the mean while safe and out of danger. It would therefore be too unreasonable to oblige them according to the Tenor of a League upon an equal Foot to bear the same Burden with the inland Provinces, and such as were less subject to Damages: For seeing their Territories were open and liable to be incommoded by the Enemy, they could not be able to sustain the same Burden as the rest of the Provinces.

But others excepted against this, saying, It was no difficult Thing for them to go upon the foot of an equal proportion whereby those present Losses which were sustained by the Frontier Provinces, might be compensated by laying less Impositions upon them, or remitting greater ones in proportion to the Damage they received, and applying the rest towards the Taxes and use of the Government.

Lastly, it was objected, That each of those Provinces, the State whereof they had now under Consideration, had different Laws, Priviledges and Constitutions, whereby some of them were prohibited to do things for the Common Cause, which others were free to do; and therefore it seemed as if that diversity was by no means compatible with the equality of this League or Union, unless perhaps the State of all these Provinces were changed, which the Subjects would neither endure,  
and



and that would be attended with the greatest Inconveniency.

But this was again opposed by others, who urged it would not obstruct the Benefit of so advantageous an Union, that each Province might have the administration of their own Affairs wholly to themselves, but yet for the good of the Common Cause and carrying on of the War, one Republick might as it were be constituted of the whole, whose Affairs, upon the constituting of a Supream Authority consisting of the Deputies of all the Provinces, might be managed according to the intention of each Province, and with the security of the Laws of each of them: And of this they had a pregnant Example before them in the *Swiz-Cantons*.

*Resolution.*

Hereupon there was a perpetual and most advantageous Union entred into, which as it tended to the Benefit of all of them, and had a regard to the State of each of them in particular, was readily embraced by them all.

*Event.*

This is known to the whole World, and the vast benefit that did accrue to the Provinces from this Union, whereby they have rendred themselves the richest and most formidable Republick in the known World.

*Judgment.*

That League or Union is most useful and just, wherein abundant satisfaction is given to all Parties,  
tho'

tho' they are unequal in divers respects; for their Authority remains equal to the rest, whose Power, tho' it be more inferior, yet the Cause was equal and the same with the others, and the Burden of each to be equally born for the benefit of the Common-wealth, tho' every one did not contribute to the same in equal proportion, because there was a regard had to the Wealth and Fortune of every Province; and indeed upon such Occasions a Geometrical and not Arithmetical proportion was to be followed; neither are we to consider those singly and apart who were assisted, but all ought to be assisted in each singly: And lastly the stronger ought always to consider in this Case, that they ought the more readily and with the greatest assistance to come and relieve the rest, by how much the more they themselves shall afterwards be assisted by those to whose Aid they are come.

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#### C A S E XLVI.

*Whether a Prince who is Sovereign in his own Territories, but as a Member of an Empire bound to the observance of divers Constitutions made for the good of that Collective Body, can so far offend, as to forfeit his and his Children's Right to his own Dominions, and be proscribed accordingly?*

**F**rederick V. Prince Palatine of the Rhine, having accepted of the Crown of Bohemia, and being not able to hold it, he was proscribed by the then Emperor Ferdinand III. who in January 1622. summoned a Dyet to meet at Ratisbonne (where the

the Electors and divers other Princes of *Germany* Assembled, either in their own Persons or by their Deputies) with a Design to take off the Edge of the Princes dissatisfaction for his harsh proceedings against the Prince *Palatine*; and thinking no Man (as he said) would take the boldness to mediate the Restitution of the proscribed Elector into the Colledge, he could do no less then dispose of the Electorate, now *pleno Jure* devolved to him as Emperor, which he had bestowed upon the Duke of *Bavaria*, for his good Service against his own Nephew, the Expulſed *Palatine*, and requested the Electors and Princes Opinions, how the Peace of the Empire might be established to prevent all future Commotions.

*Opinions.*

Now the Protestant Princes desired the Emperor to consider the Importance of the Business; and said,

1. That tho' his Imperial Majesty, in his own Judgment, might have had Cause enough to publish the Ban against the Prince *Palatine*, yet they were of Opinion, that in this particular Cause, which so nearly concerned the disposing of an Electorate of the Empire, and so principal a Person of the Electoral Colledge (which might be of very ill Consequence) the Emperor should not of himself have proceeded so rigorously, nor without the Advice and Consent of all the rest of the Electors, according as it was agreed upon in the Capitulation-Royal, which was held for a fundamental Law of the Empire: And several did the more dislike his Imperial Majesty's so sudden a proceeding, because the Prince *Palatine* had never been legally summoned; but had been condemned,

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uncited, unheard, without any knowledge of his Cause, contrary to all ordinary Proceedings, and against all Equity.

2. They said, They did not design to call the Imperial Power into question, but yet they could not but put his Majesty in mind of the Promise made in his Capitulation to the Electors, thereby requiring him to stand to his Word, and not to intermit the performance of it.

3. They desired nothing more than to gratifie the Emperor with their Suffrages, but perceiving so many and such great Difficulties therein, they could not but admonish him of the Danger of it; this being their Opinion, that seeing his Majesty had graciously called the Diet for restoring the Peace of the Empire, it would be altogether necessary first to remove the Obstacles of the Peace; and seeing all the Stirs began in *Bohemia*, the Emperor would do well to labour first for the quieting of that Kingdom, and Command a stop to be put to the severe Reformation, and frequent Executions there, that so the Hearts of his Subjects being overcome with Grace and Mercy, might be sweetly united to him, and all Fear and Distrust utterly removed, without which they could see no hope either how his Majesty could sit safe upon his Imperial Throne, or how the Electors and Princes could be freed from their Fears; it being evident, that the *Bohemians* and others, being made desperate by the extremity of their Sufferings, would take any occasion to begin new Troubles, and involve the Empire in new Dangers.

4. Moreover All the *Lutheran* States of the Empire, which followed the *Ausburg* Confession, had their Eyes upon it; that *Bohemian* Reformation, which tho' it were given out to be for private Justice,

stice, yet it was so linked with the publick Cause, that unless it were speedily ended, and the two Churches at *Prague* granted by *Rodolphus II.* not in favour of some private Men only, but of *Christian* Elector of *Saxony*, and which had continued free until of late, were again opened and the free exercise of Religion generally permitted; they could see no sure Peace likely to be in the Empire, but rather utter Ruin and final Desolation might every day be feared; seeing it was apparently known, that it was not those that professed the Reformed Religion, who begun these Troubles, but the Nobles and great Officers, whose Designs the others were compelled to obey.

5. And for the Prince *Palatine*, seeing he was already sufficiently punished, it were more commendable in the Emperor, that now at last upon his Submission, he would be pleased to restore him to his Lands and Dignities; otherwise there was no likelihood of restoring Peace to the Empire; and in transferring of the Electorate this was principally to be considered, whether the Prince *Palatine*, excluded in his own Person, did debar his Children, who, by the Providence of their Ancestors and before this Act of their Father, had *Jus adquisitum*, an Hereditary Right unto the Electorate, or the Brother of the Prince *Palatine*, who had no ways offended the Emperor, or by reason of his Minority could not, or others of the Kindred of the Prince *Palatine*, should be, or ought to be in this Case neglected? If they were, other Electors, &c. Would take it ill, and it might occasion various Distrusts betwixt the Head and the Members: For the Princes allied to the Prince *Palatine*, who had hitherto been quiet, upon confidence of the Emperor's Clemency, perceiving now all hopes of that Dignity in their Family taken away, must needs have

have recourse unto Arms, and endeavour the recovery of it by force; and if the Emperor should dye, this Controversie being not decided, they might well fear many Inconveniencies would fall out contrary to the Emperor's desire; for tho' upon the advantage of his Victories, he had had the Law in his own Hand, if the Wheel should turn, that side which was lowest would get up again.

6. Therefore they Thought it more Wisdom, not to proceed too suddenly, but rather to accept the Intercession of other Electors and Princes, as in such Cases had hitherto been practised, considering the Prince *Palatine* was then but young, abused by ill Counsels, and no ways the Author of those Commotions in *Bohemia*, they being in an Uproar before his coming amongst them; and if his Majesty would pardon the Prince *Palatine*, he should ever oblige the whole Electoral Colledge, and all the Kings and Princes allied to him; and the Prince himself and all his Posterity would be cautious, when they remembred their Exile, how they embroyld themselves in such Affairs for the future, whereas if he saw the Door of Mercy quite shut up, and nothing left him but his Life, it would make both him and his desperate to attempt, so as that there would be no end of the Troubles in the Empire; the Emperor therefore would do much better, if for his own Honour and the publick Good, he would prefer Mercy before Severity, and not pursue these Extremities.

To these Things the *Roman* Catholick Princes replied, saying,

1. That the Emperor had shewn Causes enough why he should deprive the Prince *Palatine*, and the *Palatinate* being devolved to him, he might dispose of it without having any regard to the *Palatine* Line, according to his own pleasure.

2. That



2. That his Imperial Majesty, could not well hold any Terms of Amity with him, tho' he were restored, and this Impunity would give occasion unto others to offend.

3. As for Matter of Punishment there would be little difference between the Emperor and the *Palatine*, seeing his Majesties Lands and Dominions were no less wasted than the others, and yet there was a great difference in the Cause; for this fell out to the Emperor without his demerit, and the *Palatine* did the other, having no necessity for it.

4. That he had refused Mercy in not acknowledging his Fault, nor seeking for Favour, and it was an unequal Request for the Emperor to accept of any Reconciliation, when his General *Mansfield* was yet in the Field, and prosecuting his Cause by force of Arms.

5. Lastly, That the safety of the Empire consisting in the filling up of the Electoral Colledge, the Emperor had done very well in a speedy resolving upon it, and other Emperors in the like Cases had done the same before.

The Protestant Princes replied hereunto, saying.

1. That for the security of the Imperial Dignity, and safety of the Empire, there was no question but it consisted in the Concord of the Electoral Colledge, with the Emperor, and the Prince *Palatine* had (as was alledged) done amiss, and yet if the Emperor should still use Rigour, the Princes of the *Lower Saxony* were of Opinion, there could be no Peace established in the Empire, the good of which being most worthy to be preferred, the Emperor would do wisely to suffer himself to be entreated, and change Rigour into Clemency, making the Empire by that means glad with a desired

red Peace, otherwise new Flames were like to break out in those Places which were yet preserved from burning.

2. That the Emperor had now, by the assistance of the Electors and Princes, recovered his lost Provinces, and wanted nothing but the quiet possession of them, which this desired reconciliation was the best means to effect; the Hand of War might be lifted up, but who knows where the stroke would fall? and Victory was so long uncertain, while the adverse Part had Power to reinforce his Arms.

3. As for renewing the War there was yet a fair pretence left, for that in giving away the Electorate, the Prince *Palatine's* Sons and Brother had been neglected, and the Minds of many of the Princes of the Empire were already possessed with these Principles; besides the King of *Great Britain* could not but take it ill that he should see all his Endeavours have no good effect, but his only Daughter and her Children left in Exile.

4. As for the manner of the Reconciliation, there might be a particular Treaty and Consultation, wherein, the Emperor's Prerogative Imperial being reserved, all Parties might receive Satisfaction, and the Empire again flourish in Peace.

5. Lastly, If these Remedies were not apply'd it would produce ill Blood, yea Heart-burnings and Distrusts in the Electoral Colledge it self.

The Emperor replied to these several Answers, and said,

1. That tho' some had wisely heretofore resolved him that his Proceedings in proscribing the *Palatine* was both legal and necessary (meaning the Elector of *Saxony*) yet he now perceiving some of them of Opinion, that according to the Capitulation-Royal, he ought not to have proceeded so

so far without the Knowledge, and consent of the Electors; but as he had no ways gone beyond the Capitulation, but even before he set out the Ban, punctually considered all that was necessary to be taken notice of, so he did also desire nothing more, than that a Diet might be convoked, for the due treating of and advising about this Business; which meeting being impeded by the prosecution of the War by the Prince *Palatine*, he could do no less, to take down his Courage, than to publish the Ban against him; which Course of his seeing it was never intended to be prosecuted to the prejudice of the Electoral Colledge, or against his own Capitulation, he hoped the Electors would not take it otherwise, being he promised withal so to moderate it, that no detriment or prejudice should result therefrom to the Electoral Dignity.

2. Then for the translating of the Electorate, and their Advise for restoring the *Palatinate*, he said he perceived some difference in their Opinions, one part wisely and in favour of him affirming the great reason he had to do it; but for the other Party that were for having the Elector *Palatine* restored, he was not willing to gratifie them, seeing in the disposing of it another way, he was satisfied he had done no more than he had just Reason for; neither would he defer the filling up of the Electoral Colledge, because the dispatching of it, did so much concern the Common Good. Then with a soothing Expression, he added; but for the restitution of the Person of the *Palatine* they should see how much his Mind was inclined towards Clemency, and how far he would declare himself to gratifie the King of *Great Britain*, King of *Denmark*, Elector of *Saxony*, and other Electors and Princes interceding for him.

3. As concerning his forbidding the Exercise of  
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the *Lutheran* Religion in the City of *Prague*, he did not see how it any ways concern'd that Diet to enquire into it; his Letter had signified the Causes which moved him to begin it to the Elector of *Saxony*; nor could he think that what he had done there, would be suspected by any of their Neighbour-States or Territories, seeing he had sworn more than once by the Word of an Emperor, that he would most religiously observe the Peace both of Religion and Civil Government, throughout the Empire.

The Protestant Electors and Princes, still persisted in their Resolution that the Emperor could not legally translate the Electorate, the Words of the Capitulation being clearly these; In all difficult Affairs, no process ought to be made without the Knowledge and Consent of the Electors; and that without ordinary Process, no Proscription should be put forth against any one of the States of the Empire. This, they said, was the Fundamental Law of the Empire, which required no more but to be constantly observed, nor was it to be drawn in to farther Dispute, or Deliberation; and it highly concerned the Electors to see to the observation of it, and more particularly the three secular ones, whose Dignity did by an Hereditary Right descend to their Posterity, to keep it safe and entire, which they hoped the Emperor would not contradict.

#### *Resolution.*

The Emperor would not be persuaded to alter his Mind; but at last to gratifie the Princes, he was content to confer the Electorate with a Proviso that the Investiture of the Duke of *Bavaria* should

should not be prejudicial to the Children of the Elector *Palatine*, and so the Diet ended.

*Event.*

The Elector of *Bavaria* enjoy'd the whole till the Peace of *Westphalia* in 1648. when the Son of the King of *Bohemia*, the dispossessed Elector, was restored to the Lower *Palatinate*, and created an new Elector of the Empire, in which state that Country has remained unto this Day; *Bavaria* being the first Elector of the secular ones of the Empire, as the Prince *Palatine* was before the Proscription aforesaid.

*Judgment.*

There are doubtless some Particular Cases where- in Princes may justly be dispossessed of their other- wise lawful Inheritances and Possessions; Indeed the Prince *Palatine's* Crimes in respect to the *Bohemian Crown*, seemed to be considerable. First, in accepting the tender of it, when other discern- ing Princes, as *Carlo Emanuel* Duke of *Savoy*, and some more had refused it, as a point too tick- lish to be medled with; then in his unadvised managment of his Affairs, after he was in posses- sion of it, so that if his proscription, was not other- wise just, yet it seemed to be a proper Reward of his Rashness and Folly: What was cited in his Behalf out of the Capitulation is very strenuous against the Proscription, and that it could not with Justice be executed by the single Authority of the Emperor; but supposing there might be some other Causes therein, and Circumstances of State, all which might entitle him thereunto, to Extent the same to his Children and Relations,

*Present Good to be rejected when Evil ensues.*

and to give his Inheritance quite away, argued too much Arbitrariness in his Imperial Majesty, and seemed to be an Act of manifest Injustice, tho' we find that Saying but too frequently true, *The Fathers have Eaten four Grapes, and the Children's Teeth are set on Edge.*

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## C A S E XLVI.

*Whether and how is it that Magistrates ought to reject some Present Good, as Evil, when there is any Certain apprehension, that some great Evil will ensue, if the present Good be admitted of?*

**F**ormerly, when the Provinces of the *Low Countries* were infested with Wars and continually plagued with IncurSIONS of the Enemies, several People of little or no Fortune retired into *Holland*, and more especially were desirous to settle at *Leyden*, by reason of the Woolen Manufactory carryed on there, and wherein they had been imploy'd in their own Homes: But the City, tho' very large, yet seemed too narrow for the reception of such a Multitude; and therefore, the City-Magistracy fell into a Debate, whether they should not enlarge the Bounds of their City, and, as they had done a little before, built a new City to the old one, and whether this would tend to the publick Good?

*Opinions.*

1. Some were for it, and alledged, First, That Foreigners



Foreigners and the Miserable were not to be rejected, who being formerly entertained towards the beginning of the Civil Wars, had been the means of making the City and several private Men mightily increase in Splendor and Riches.

2. If they were not received they would go elsewhere, and would, by transferring their Habitations elsewhere and perhaps into the neighbouring Cities, carry the Woolen Trade and Manufactory, wherein their City most flourish'd, to other Places.

3. But in case they were received by them, why then their Woolen Trade and Manufactory, would very much increase.

4. That they had lately fallen upon the Trade of Weaving of Cloth in their City, as the *English* did; that they wanted many Hands for this Work, and that the Merchants complained for want of Workmen; why therefore should not those miserable Exiles be entertained by them?

5. For if they were entertained, instead of being burdensom they would be of great use to the City, for they were capable of maintaining themselves and their Families by their own Labour, besides other particular Persons might look after the Work, and lastly this would increase their Revenue, wherein consisted the publick Good and Wealth of the Country, and their City in particular.

6. The late increase of their City, which proceeded from the same Cause that fell out some Years before, they found by experience to redound to their Benefit; why therefore should they hesitate to imitate so just and profitable an Example?

But others opposed these Sentiments, and stily contended, it was not convenient for them to en-

large their City, by receiving such a multitude into it; and said,

1. That there was no Injustice in it, for them to refuse the admission of those afflicted People into their City, which they were not able to entertain; that every good Magistrate's principal Care ought to be of his own Citizens more then of Foreigners, and their necessitous States; and when they were about to consult the publick Good, Mercy better became others than Magistrates.

2. It could be no Prejudice nor Injury to the Woolen Manufactory of *Leyden*, if they did not receive them, but that they went to set up the same somewhere else. The Fame of *Leyden* would support it, wherein as she excelled in War abroad, so she would in the value and esteem had of its Woolen Manufactory both at Home and in Foreign Parts: That they had enacted Laws for the regulation of Weaving and making Woolen Cloth; that they had appointed publick Overseers, who had Authority to prevent any from exceeding, or any ways derogating from the Rules prescribed them in Weaving; and so the Cloth of *Leyden* as being the best Wove and otherwise ordered, had the best Reputation even of old for its goodness amongst Strangers; whereas the neighbouring Cities and others who came short of such Regulations, could hardly attain to such Reputation.

3. That it was not now their Business to consider whether they wanted more Hands, to carry on their Work, the Merchants seeking only thereby their own particular Gain, but whether the Government ought to receive and allow of more: they were not to have any regard to what was beneficial to single Persons, but for the good of the whole Community; that private Persons were to have

have regard to what was present and concerned their own particular, but it was the part of Magistrates to mind Futurity, and the Concerns of the whole, that the present Benefit which might accrue from those People, of whom they talked, would redound to the Citizens, but the future Difficulties and Inconveniences would be the Publick's: wherefore the Interest of the Government was before all other Considerations to be regarded herein.

4. That indeed those People might maintain themselves by their daily Labour while they were able, but many Misfortunes they might and ought in Prudence to fear, whereby they must be incapacitated to sustain themselves and their own Families; and how much the more incapable would they then be of supporting so great a Multitude: If any such thing hapened, as well it might; what else could they expect from such a scum of People besides Commotions and Tumults, and a kind of Plundering of their City?

5. Moreover, in case they came to be afflicted with Diseases in particular Families, then they would have recourse to the publick for Maintenance and Relief, and so the publick Treasure must be exhausted.

6. Again, they should find upon the decease of the Fathers of those poor Families, that their Widows and Broods of Children which were then scarce fit to work, would be a Burden to the City, and must be supported by it.

7. Suppose their City should be afflicted with a severe Plague, why then there would be as it were a stop put to the Current of their Trade, and few or none come to fetch away the Cloth and Woolen Manufacturies of *Leyden*; and then there would be a kind of vacation or suspension of the Trade.



Trade: In the mean time, they ought to consider what they could do with so great a multitude, which if once received they could not cast out again; how then could the City be in a Condition to sustain the Necessities of them all? And this was well known unto them from the Experience and Calamity of former Times.

8. What if they should at any time want Wool, or some other Materials to Carry on their Manufactory? Certainly there were better Cloths generally made of *Spanish* Wooll; but seeing now the *Spaniards* were at War with the *Portuguese*, there would be divers Flocks of Sheep undoubtedly drove away and scattered, and so that Wooll grow scarce, whereby their Looms must necessarily stand still, and this must reduce so vast a multitude to great Poverty and a want of every Thing.

9. They might also be afflicted with a scarcity of Bread-Corn or Dearth; and as so great a multitude upon such an occasion would not be able to support themselves and their Families, by their ordinary Labour, so their ordinary Wages would not do, and thus they must have recourse to the City for support, and to bear part of the Burden.

10. Nay, it was altogether unadvisable to admit a greater number of Foreigners among them, than they had Citizens, there was less confidence to be put in them and less obedience to be expected from them; but more Tumults, which were so much the more to be feared by how much the greater the Causes of them were, which had already been touch'd upon: The Hands of Magistrates ought not to grasp at more than they are able to contain: As Empires of great Power contain themselves within Bounds, why might not single Cities  
very

very well do the same? Whose Magistrates by how much they are less and inferiour in Authority then Great Princes, by so much the more ought they to take care, least they did or allowed of such a Thing, or went indeed so far, as not to have sufficient Authority for the Defence thereof.

II. That their City heretofore was increas'd, and that with good success, which could not be denied; but that was not the Matter now in dispute, but this, Whether it was likely to do so for the future? All the Examples of our Ancestors, tho' approvable by the then success of them, are not to impose a necessity upon us of approving them. Some of them were of that Nature, that they would at once both exhaust themselves and introduce the Change of Posterity; and to be inclinable always to follow and practice them was nothing else but grievously to offend in overdoing (which in respect to Virtues is called Excess) and in this Case was, as it were, the Excess and Vitiosity of the City.

*Resolution.*

Hereupon it was agreed, That they should not extend the bounds of their City by the reception of those Multitudes of Foreigners and poor People among them.

*Event.*

By so doing they found that they enjoy'd great Peace and Tranquility for the present among them, and greater Security for their Posterity.

*Judg-*

*Judgment.*

There are two sorts of Things that for the most part fall under the Deliberation of a Government; some which are good in themselves, without any Commixture of Evil, and those without doubt are to be embraced, and no wise Men will dispute it: But such Things do indeed seldom present themselves to us. There are some therefore, and they are most in number, which are so far good, as *Pliny* the younger says, as yet to be inspired with the Neighbourhood of some Evil: Now for Men to deliberate about that is a difficult Thing, and therefore they ought to be wary in their Sentiments hereupon; for in this Case a prudent Magistracy ought to weigh every minute Circumstance relating therunto, both in respect to Time and otherwise: Hope and Fear, the Good and the Evil, both present and future, are to be set the one against the other: If more Good than Evil is expected, the fear of a less Evil ought not to impede or overthrow the hopes of a greater Good: Now in this ambiguous State they are to weigh what is best to be done; whether we ought to shun a Thing upon account of the Evil that is in it, or to do it for the Good sake; Just as when there is need of great Expences we freely part with our Mony, if so be we reap a greater Benefit by so doing, than we do Inconveniencies.

But in case the Good and Evil are upon an equal Poize which we expect from the same Thing, so that there can be no Benefit had from the Good by reason of the equal proportion of Evil that is in it, and that also every Evil must be very detrimental to a Government, the Evil ought to be accounted the greatest of the two, and so the whole Affair laid



laid aside. Lastly, where the fear of Evil is more certain than the hopes of Good, when an Evil is dreaded, which no Magistrate, nor even any human Industry can avert, and that some times it may be of that nature, as to be conjoyn'd with no manner of Good, tho' it promises very much at present, it's advisable also to intermit the same. A fearful Man is displeased with all present Things, says Tacitus, Hist. 1. 3. and we may add for our present purpose, That a Magistrate who is afraid of some great Evil not without grounds, but most Justly, as being that which will or may happen, ought never to be fond of present Things, tho' they smile upon him.

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C A S E XLVII.

*Whether new Institutions introduced against the received Laws of Ancient Times, and used now for some years by a Government, ought to be changed according to the Rule and Form of the old Laws, under pretence of Liberty.*

**I**T was the Ancient Rule and Custom of *Bolsward*, a no mean City in *West-Friesland*, that the Nomination and Choise, as they call it, of Burgomasters, or their Chief Magistrates, was in the power of the whole People; but when the Face of Affairs came to be changed in the *Low Countries*, and that City among others submitted to the Government of the States of the United Provinces, it was thought fit, upon very weighty Considerations, to transfer the Power of creating Magistrates into the Hands of the Governor or States of the Province; and this Custom was observed for many

ny Years to the great Peace and Tranquillity of the City; till the Citizens after a time, being animated thereunto by the licentiousness and ambition of a few Persons, insisted very stiffly upon having their ancient Constitutions, Liberty and Authority of nominating and choosing Magistrates restored unto them, which Controversie being brought before the Tribunal of the States, the same was variously discussed both on the one and other Side.

### *Opinions.*

The Citizens insisted upon the restitution of their ancient Laws, as if their Liberty consisted therein; saying,

1. That 'twas true, the Form of their Government was changed with their Masters, when by reason of the Tyranny of the Duke of *Alva* the *Spanish* Governor of the *Low Countries*, they with the first resolved to join in and take the part of the United Provinces; but however this hapned it mattered not: But now since Things were in Peace, and their City in a better State, their ancient Rights which were hitherto waved rather than taken away because of the necessity of the Times, ought to be restored unto them. Those Things which were done by a Government thro' Fear, Force or Necessity, ought to be reputed as not done, and that such an Example ought not to remain as a Thing perpetually to be imitated.

2. That it was a Priviledge granted them of old, and enacted by the Consent of the whole Body of the City, and inviolably observed till the beginning of the Government of the States, that the nomination and choice of Magistrates, should be in no other than the Citizens themselves; but when

when they entred into a War against *Spain* for the preservation of their Liberty and Priviledges, why should not a most ample Priviledge, and that wherein the freest Power of their Citizens consisted, be now restored to them?

3. That they had had undergone many Inconveniences from the change of Government; that they had many Governors put over their City, whom the Citizens did by no means affect, and others of no manner of Merit, whose whole dependance was upon the favour of the Stadtholder of the Province and of the States; and therefore they thought it consistent with their Liberty, that he who was to command all, should be chosen out of and by all; Especially when the Authority was conformable to the Rule of their ancient Priviledge.

Those who had then the Magistracy in their Hands in *Belfwart*, talked quite at another rate in the States; and alledged,

1. That all Change in Government was injurious, and how much more that which proceeded rather from the Humour and Ambition of some few Persons, than any necessity there was for it; Especially if the change regarded the Constitution of the City, which was the Rule whereby they governed the Common-wealth. That the ancient Form of the Government was changed at their first erecting of their States, out of necessity and for the good thereof as the Event testified; for seeing the Citizens at that time were divided into Parties and Factions, and that there were Divisions among them to this Day, the same chiefly proceeding from diversity of Opinions in Matters of Religion, they at that time ought to have left the power of chosing Magistrates rather to the Choice of one Governor, or the whole States, than to the Authority of the unconstant and divided Multitude,



steads, and the same ought still to remain there, since the same Cause still existed.

2. The Priviledges or ancient Authority of the People was not violated by what is alledged, but the publick Weal of the City preserved; they are violated, when taken away, to the detriment of the Government: They seemed to be preserved, when they are so changed as that the safety of the Publick is contained in the Change. It was always free for those at the Helm to do this upon such an occasion, because the Common-wealth is not subject to Priviledges, but Priviledges to the Common-wealth.

3. What is done in respect to Princes and Magistrates, may be transacted also in respect to the Laws and Constitutions of the People: If Princes and Magistrates who are chosen for good ones, act otherwise, they may be turned out; and why should not the same thing be done in respect to Laws, which as they were of old to be received for their Usefulness, so now at this time endanger'd the Good of the Publick, if they should be revived again and put in practice? That the Citizens agreed very well, and were of one and the same Mind towards the Government; that therefore the choice of Magistrates was then allowed to the constancy of their agreement; but that now they disagreed, why then should the same choice, wherein the consent of all was required, be left to the disagreeing Multitude? Seeing therefore the Grounds of the choice of the People was taken away, which was their Agreement, that could scarce subsist or be preserved.

4. The altering of their ancient Form was no prejudice to the City; and in case that were now removed, which the Citizens required, many Inconveniencies would undoubtedly ensue; for in case

case this Form of choosing Magistrates was render'd void, all Things would as it were be declar'd void thereby, which had been hitherto done and transacted by the Magistrates that had been elected according to that Form; for if the ancient Form were altered when the City was in so disorderly a State, then the Men of this or that Party, of this or the other Religion would be brought into the Government according to the Humour of the factious Multitude; that the old Magistrates and those now chosen would be at continual variance with the new ones elected by the People; nay, and the Stadtholder would take it ill, that the Power which had hitherto been allowed him should be taken away; from all which Evils nothing could be expected but confusion and a contumixture of new and old Things, perpetual disturbances in the City, and at length the Ruin thereof.

5. Moreover, this Change would afford too great and dangerous an Example; that the received Form of Government was introduced by the Authority of the States, and why should that be prostituted in favour of a few humourfom Persons; and if the same were altered, other Cities and Places would require it, where the like had happened; for what was this more than altogether totally to subvert the established Power of the laudable Government and the order thereof, which had hitherto remained immoveable?

*Resolution.*

They hereupon thought fit to decree, That nothing new should be innovated, and that the old Constitution of the People's choice should give way to the Form introduced by the State's Necessity and Conveniency.

*Event.*

*Event.*

After this manner the Tranquillity of the City and Authority of the States was preserved.

*Judgment.*

As old Constitutions as long as they are of use ought not to be chang'd, so a Thing altered either for the averting of Evil, or procuring a greater Good, ought not to be renovatèd again, as an ancient Usage, but to be accounted dead, and involved in entire oblivion; for antique Things if they be only, are and ought to be esteemèd of no Authority; for then new ones are better than they, from which either a less Evil or greater Good is reaped. The Authority and Name of Antiquity deceives many; for new Institutions, which are substituted in the room of old ones, and now have for some time been observèd, if they do well, are of greater Authority than those old ones. But for those which are callèd Antique, and have no other Foundation than that, they were once new, as *Tacitus* says.

C A S E



## C A S E XLVIII.

*For the entring into and safer observance of Publick Leagues and Covenants, with what Care and Caution ought their Mandates or full Powers to be weigh'd, who in the Name of other Princes or States, are commissioned to treat of and conclude with us upon arduous Affairs.*

**I**N the Year 1598. after a sharp War had for some time been waged between *Phillip II. King of Spain*, and *Henry IV. of France*, both Princes, after having been exercised with a variety of Fortune, and being moved thereunto by the Mediation of the Pope, began to be weary of the War: And therefore they went seriously to work about making a Peace or Truce. The Embassadors of both Princes were to meet at *Vervin*, a City in *Burgundy*, where, when the *Spanish* Embassadors produced their full Powers as they call them, the *French* Embassadors entred into a Debate upon them, as supposing the *Spanish* Embassadors had not a full Power and Authority granted them to treat of and accomplish so weighty a Matter, as that of making a Peace or Truce between the two Nations. The *Spanish* Embassadors were sent from the *Spanish-Netherlands* thither, where *Albert Arch-Duke of Austria* was then Governor for *Spain*: Now the Form of the full Powers of the *Spanish* Plenipotentiaries were conceived, as they call it, in general Terms, thus: *That Phillip King of Spain, gave him Albert Arch-duke of Austria and Go-*  

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vernor

vernor of the Low Countries, Power, and he in his Name to John Richardos President of the Council, and to John Baptista Taxius Councillor of State, as being Persons very faithful and fit for that purpose, to treat with the most Christian King Henry IV. or his Embassadors every way, for making a longer or shorter Truce, or a perpetual Peace.

### Opinions.

Some of the *French* Embassadors upon viewing these Powers, thought the Form of them to be sufficient and valid.

1. Because a Power seemed to be granted to the *Spanish* Embassadors by these Words, and therefore they might safely treat with them; for tho' some particular Things, which were necessarily to be done were not specified, yet they were comprehended in general Terms; for they were such, that a Command could not be executed, without them; but now that 'twas the Opinion of the Lawyers, that that Person is not thought or supposed to exceed a Command, which does that which co-heres with it, and without which it cannot well be done: Nay, that word *omnimodo*, every way, included all in it, and gave a full Power over all, therefore a Power to determine every thing that came under their Cognizance.

2. It was to no purpose for them to speak of rejecting the Embassadors sent to this Congress by Arch-duke *Albert*, as if they were to treat personally with him about this Affair, and that it were not free for him to depute others in his place, who being furnish'd with sufficient Powers were to be relyed upon as much as he.

3. The *French* ought not to be too scrupulous or punctillious in receiving or rejecting of those Powers;

ers; for unless they allowed of the present Powers, perhaps the *Spaniard's* Ambition would be such that they would give no other, and so it might come to pass through too much superstitious Caution, that this opportunity which was so useful and necessary for the *French* Affairs, would be lost for making a Peace or Truce.

But the greatest part of the *French*, and those that were most Cautious, argued otherwise and said,

1. That it seemed as if these Powers were not to be allowed of, because there was never any safe trusting to general Terms; for in all publick or private Transactions Particulars were accounted more valid than Generals: For Generals may admit of various interpretations, be enlarged or restrained as every one pleases, or his Interest serves, in prejudice of those Things which have been once agreed on. But if conceived in Particulars they remain firm, and those Things that are confirmed, when all variety and ambiguity of interpretation is precluded, must necessarily and constantly be performed.

That that Word *omnimodo*, which was so specious in it self, yet was not firm enough for securing the League that should be made; the Lawyers shewed this sufficiently, who determine, that some Things were and might be made void which were not particularly commanded in their Instruments, altho' they might seem to be particularly comprehended under the general Terms of their full Powers.

2. Seeing the Powers granted by the King to Arch-Duke *Albert* were the Foundation of *Albert's* Powers to the Embassadors, the *French* ought to have a Copy of it before they proceeded any farther; neither could the Arch-duke take that



ill; for this was not to suspect the Arch-duke's Honour, but to make the League sure; whatever is or we would have to last for a Government, ought in the very beginning thereof to be very certain and safe.

3. If in the King's Powers granted to the Arch-duke the Authority of transacting the Affairs in hand was confined to the Arch-duke alone, the *French* could not safely treat of a Peace or Truce with any other save the Arch-duke himself; for it signified nothing to pretend Custom here, whereby Kings and other Princes have Power to appoint others in their stead; for this was to be understood of those, who acknowledge no Superior, but the Arch-duke acknowledged the King of *Spain* to be his Superior in the *Netherlands*, was only Governor in his Name, and in this Business was particularly Commissioned by him: In the mean time they did not deny but that some such Things might offer, wherein the Person so Authorized, without expecting any farther Authority from his Superior, might, at his pleasure, execute by others what himself had been commanded to do. But there was no room for that here, for there are two sorts of publick Mandates or full Powers; some there are wherein he that commands principally and frequently regards the execution of the Mandate only, and therein the Persons commanded or impowered with such Mandates, were at liberty to execute the same themselves, or to employ others to do it: Other Mandates on the contrary, were such, wherein the impowered Person was particularly regarded, as to the execution of the Mandate, as being a fit Man, and the only one capable of executing that Mandate. This was always regarded in Embassies, that the Persons commissioned thereunto, were oblig'd

oblig'd to execute their Powers themselves, and not by the intervention of others. That they were to consider, that the Arch-duke was such a Person; and therefore they ought either to treat with the Arch-duke alone, according to the Purport of the present Royal Mandate, or to obtain and exhibit another from the King, whereby the Arch-duke should be impowered to depute and substitute others in his place.

4. That it was not for them to object too much Caution here, as if a most convenient opportunity of finishing this Affair might easily be intercepted and lost; for they were to consider upon this occasion, that the *Spaniards* designed to treat with the *French* in earnest, or not; if in earnest, why should not they provide for a just Caution, and the security of the League to be made between them? But if their Intentions were otherwise, it were better at first to break off the Negotiation than proceed, for so after the Matters were finished, the *Spaniards* would reap the Benefit of their Insincerity, and the Inconveniencies fall to the share of the *French*.

*Resolution.*

It was therefore resolved, That before they entered upon the Negotiations of a Peace or Truce, the *Spanish* Embassadors should exhibit other full Powers from their King, whereby all the Objections justly raised by the *French* might be removed.

*Event.*

The *Spanish* Embassadors took care of this, and in a short time after produced new Powers, where-

in the Arch-duke was impowered to depute others, and all Things in Dispute more particularly specified and exprest: But seeing that all the greatest Things can scarce be particularly specified in the full Powers, that Form is to be used, wherein all particulars are so contained, that there seems to be no farther need of a more special Mandate; as thus, That the King of *Spain* would ratify whatever Arch-duke *Albert*, or those deputed by him, agreed on with the *French*, of what weight or moment soever they were; even those Things which were not particularly contained in those full Powers; tho' otherwise the Form of Common Law did require a special exprest Mandate for it. And thus you have a sufficient Power and Security in making of Leagues.

*Judgment.*

Seeing a Person in Commission has just so much Authority as is conferred upon him by him that empowers him in the exprest Words of his Commission; the Forms of Mandates are always exactly to be looked into, and in conformity to their Force, Authority and Words, all Counsels and Actions are to be limited; for he is deceived and renders the Event of his Affairs and Compacts useless that allows a greater Latitude and Credit to the Person in Commission, than his Commission will bear; which is to be looked after with so much the more Care, by how much the greater the Things are which are treated of. It's the Business therefore of a publick Minister not to exceed the Bounds of his Authority; but 'tis also necessary that he should act very warily who has to do with such a Minister, and not to trust or allow him any thing that exceeds the Bounds of those Powers he has



has produced, and which warrant not the safe and just execution of the Thing he is entrusted to transact.

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C A S E XLIX.

*Of two Evils, how the least is to be chosen; and which ought to be accounted the least in the administration of a Government?*

When *Mendoza* was General for the *Spaniards* in the *Low Countries*, he sent Messengers to *Wesel*, a City of the *Dutchy of Cleve*, lying on the Confines of the *Netherlands*, requiring that they, who chose rather to observe a Neutrality in the time of those Wars, should either receive a thousand Horse, and two thousand *Spanish* Foot by way of Garison, or pay two hundred thousand Crowns, as also for a whole Month supply the *Spanish* Army with Provision at their own Charge: These Proposals, seeming to be very hard, the Matter was debated by the City-Magistrates and Counsel, and the Question was what was best for them to do in that Case?

*Opinions.*

They affirmed the Proposal was very severe and unreasonable, that they owned themselves to be under the Government of the Duke of *Cleve*, and not of the *Spaniards*; that they had never intermeddled with the Affairs of the United Provinces, against whom the *Spanish* Army was to act, and therefore since they had from the very beginning of the War in the *Netherlands* made choice of be-

ing Neutral, and had constantly observed their Neutrality, they were prest contrary to the Laws and Rights thereof, with Matters that were of a Warlike Nature, and came under that Topick; that they ought not to allow of *Spanish* Garisons, or supply them with Money or Provisions: If once they agreed to that, they should be always liable thereunto, for the *Spaniards* would attempt it frequently, and the United Provinces demand it, as occasion served; seeing that those who between different Parties and Factions enjoy the Right of Neutrality, are supposed to lye under the same Obligations to the one as they do to the other. Lastly, if they allowed of their Demands, then they allowed of Hostilities, and so there was an end of the Advantages to be expected by a Neutrality.

But to this others made answer, That they met not to complain of the unjustness of the Demand, but that they might by united Counsels find out apt Remedies against it; that the Motion of the *Spaniards* was unjust, but that it was backed with an armed Power, and such as they ought and could not, tho' they were minded, withstand. In the mean time they were not against sending Deputies to *Mendoza*, who should inform him of the Liberty of their City, their Rights, and what the Benefit of a Neutrality did import; but if the *Spanish* General proved inflexible, they must necessarily go upon such Methods whereby they might best satisfy him, and regard the Good of their City.

But then there were others who thought they were not presently to give way to the Demands of the *Spaniards*, but rather to expect at first to be forced by an armed Power, and so the Right of Neutrality would be preserved, as not being violated by the people of *Wesel*, but by the *Spaniards*  
if

if at length they agreed thereunto; not spontaneously, but as being compelled by necessity; not as if the *Spaniards* demanded what was just, but as using Force, and acting towards them in an unjust manner, which they could neither prevent nor repel. For there was no Law but would allow they did not seem to act willingly, who being hemmed in with an armed Power, which they were not able to cope with, had not a Power to refuse it.

But most of their number opposed this, alledging, if they suffered their Territories to be invaded, it would be an incredible Loss to them, nay, a greater than if they assented to the Demands of the *Spaniards*, seeing the Wealth of the whole City did in a manner consist in their Lands, and the Products of them, which if once exposed to the Ravages of the Soldiery, what Benefit could the Citizens expect from them? And if they suffered their City to be besieged, their Trade would be intercepted and cut off.

Moreover, they were also to consider this, That if Force was used, either the Citizens of *Wesel* must persevere to oppose it, or else give over after the first onset; if they continued the War, then the Right of Neutrality was violated, and not likely to be renewed again; and they were so much the more to regard this, by how much the longer the War between the *Spaniards* and the United Provinces was to last, which was like to be perpetual. That therefore they should involve themselves in the Misfortunes of a perpetual War, if once they were drawn into it. But if they gave over, and were compelled by dire necessity, after expecting and sustaining of Armed Force to agree with the *Spaniards*, perhaps the *Spaniards* then would not desist, but farther prosecute an unjust Action by Force of Arms; neither was it so  
easie



ease a Thing to lay down Arms as to take them up: If Things should happen so, there was none but must foresee, with what Misfortunes the City must be involved. Moreover, in case it were granted that the *Spaniards* would desist from their Enterprize, upon their desisting to oppose them; yet none ought to flatter themselves, that the *Spaniards* would do that, without their present Demands were satisfied: What Reason therefore was there, why they should not be satisfied before Force was used, and thereby the Evils be prevented, which from the using of Force must undoubtedly be expected, or feared to be greater? for a beast ought not to require an heavier Burden than what is laid on him. What if the *Spaniards*, when irritated by the stubbornness of the People of *Wesel*, should make unjust Demands then the former? And therefore for these Reasons they thought one of the Terms was necessarily to be accepted, to wit, either to receive a Garison, or to supply them with the Money and Provision.

And yet in this ambiguous State, they could not well agree which of those Terms was best for the City to accept: Some were of Opinion, it was most advisable for them to receive a *Spanish* Garison into their City, for this Reason, that when they were put under an inevitable necessity of allowing some Misfortunes to come upon them, of the two Evils the least should always be chosen; for the lesser Evil, if compared with a greater, has a degree of Good in it: Now therefore there would not be so much Money required for the maintenance of the *Spanish* Garison in the City, as there was Provision demanded, and the present payment of two hundred thousand Crowns amounted to; and therefore as that was the least

so

so it ought to be chosen, whereby the publick Treasure would be least exhausted.

Others on the contrary argued, that the other Proposals ought to be accepted; they said, That the least Evil was to be chosen, but in the mean time they denied that to be the least, and if they regarded Futurity, they ought to Judge it to be the greatest and most intolerable of any; for they were not to dispute whether one present Evil, compared with another was the greatest or least, but the Event of each Evil, how the same was to be higher or heavier upon them for the future. If they received a *Spanish* Garison, they should find themselves burdened longer, and perhaps as long as the Wars in the *Netherlands* lasted; but if they supplied the *Spaniards* with Money and Provision, they would by that means be immediately freed from the rest of the Evils. Again, if they received a Garison, their Domestick Liberty would, as it were, be enslaved by them, who command all, when they have Arms in their Hands; but if they gave them Money and Provision, they might keep all safe. Lastly, if they received a Garison, the United Provinces would one time or other besiege their City, as Enemies, but if they provided the Money and Provision, the States, when they had an opportunity, would only follow the Example of the unjust *Spaniards*, and require no more than they had done. It was also better to ward off the Calamities of War by Money, when it could be done, than to spend the same by waging War, and besides that, to undergo the Calamities of War, tho' never so successfully carryed on. Lastly, that it was better for them once to involve themselves in an inconveniency, and at the same time to be freed from it, than to be tossed continually therewith, and lye under it;  
so

so that the lesser Evil, if to continue, ought to be accounted the greater and more burdensom, than that which at present is indeed greater, but not to continue.

*Resolution.*

Most of them did at length agree to this last Opinion, as being best for them to follow, and most conducive to their future Welfare.

*Event.*

The People of *Wesel* by this means were at a great Charge of Money at present, but the same time they prevented a greater Evil for the future, and retain'd their ancient Liberty.

*Judgment.*

Of two Evils the least is always to be chosen; and that ought to be esteemed the least, not, which at present is only so, but is like to be so for the future; therefore where a prudent and wary choice is to be made between two Evils, the Thoughts and Events of future Things ought to be compared with the State of present Things: As in Arithmetick, one great Sum propos'd together is thought to be less than many lesser Sums, which are continually added to the former; so in taking care of the Publick, the greatest Evil is to be looked upon at present to be the least of all, and to be preferred before much lesser ones which yet may be foreseen to become in time much greater. Lastly, the greatest Evil of the shortest duration, is oftentimes and should be accounted less, than the least Evil which is protracted for a long time.

CASE



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C A S E L.

*How are their just Petitions to be allowed of, who are indebted to a Government, and desire a Remission of the Debt?*

**T**HE States-General of the United Provinces sometime after the erection of their Government, having been afflicted with a grievous Plague, which swept away Multitudes of their People, and therefore there were less of those Necessaries of Life consumed, on which Excise was laid; the Farmers of those Revenues petition in an humble manner that part of the Money which they were to pay the Government for them, should be remitted; hereupon the States consulted what they should do, and whether they ought to reject or allow of those Petitions.

*Opinions.*

Some were of Opinion they ought to be satisfied in respect to their just Complaints and Desires, for the Farmers engaged the payment of such a Sum of Money into the Treasury in consideration of the multitude of the People, which were so lessened by a fatal Distemper, that there were not as much Wine, Beer, Corn, and the like Things spent as before; and for that Reason the Produce of the Excise was diminish'd, for which Cause the yearly Sum agreed on to be paid by the Farmers ought also to be lessened. That this was a Calamity which could not be prevented by any Industry

stry of Man, and therefore it seemed just, that the Difficulties and Inconveniencies arising from such a Calamity should lie upon the Government, and not Farmers of the Revenue.

Others were against giving way to those unjust Complaints, or hearing of them.

1. Because when the same Farmers received a much greater Income from the Annual Excise than they were by their agreement obliged to pay the Common-wealth, they never brought any more into the Treasury than they had promised: These Advantages the Farmers had, and not the Common-wealth, and therefore it was just on the other Hand, that when Inconveniencies did arise, as those were then urged by them, the Farmers and not the Government should suffer by them; for the former Advantages which they had received upon such an occasion, served to make them amends for the present Loss; just as a Person who has farmed some Ground of another for a certain Sum of Money, is obliged to pay his Rent, as well in a barren as fruitful Year.

2. Because if a Debt were once forgiven upon such Complaints as these, those sort of Complaints would never be wanting upon some Account or another: They would be continually preferring one after another of them, whereby would be represented that less of these Things were expended, for which they were to pay Excise; and therefore if they did but once give way to such Complaints, the consequence would be no other, than to reduce those Taxes and Excises into nothing. And therefore they ought to look to it that they should not give occasion for the worst Example, and whose Cause was in a manner like to remain for ever.

Others

Others were of Opinion, That as the Complaints of the Farmers were just, so it would be convenient for the Government not to remit the Debt, and it would also be both a just and glorious thing in them not too eagerly to press the payment thereof: The Complaints seemed to be just, because, as has been already said, the paying of such a Sum for the Year was grounded upon the numbers of the People, as being the Spring of the Riches of the Government; but when those numbers were taken away or decreased, in such a Case it seemed as if there was no Ground, or at least a less for their paying the same contracted for the Year; that there were no Accidents to a Non-Entity: In the mean time it was thought for the Interest of the Government that they should not remit the Debt by making particular order for that purpose; partly lest they should make a bad President in so doing, and partly because the Farmers of the Revenues, tho' now labouring under the Calamity of the times, might be thought to get more Riches for the future, and so be one time or other in a Condition to pay the Debt. In the mean while it was thought a just Thing, and much for the Honour of the Republick, not to press hard for the payment of the Debt, both because the former were incapable of paying, and because this Calamity befel them, not through their own fault, but the displeasure of Heaven.

*Resolution.*

The last Opinion, as being the best and much more eligible than the rest, was espoused and practised.

*Event.*



*Event.*

By the management afore-mentioned Matters were so ordered, that the Government made no bad President by an over-facility, and at the same time retained its Right entire, and Power of suing when it pleased; and tho' the Debt was not remitted, yet there was Satisfaction made for the present Necessities of the Farmers, and of the Times.

*Judgment.*

When a Government has a Claim upon private Men, according to strict Rule of Law they ought not easily to part with or remit it, tho' according to a moderation of Right there seems to be a just Cause for remitting the same; nay, upon such Occasions great care ought to be had that the Government by reserving its Claim entire, seems to expect no Benefit thereby: For tho', as the Lawyers say, 'tis not so advantageous to have an Action or Claim, as the thing it self, yet he that reserves his Right of Claim, seems as it were to reserve and keep the thing to himself: Magistrates ought to act as the Preservers of the publick Faith, seeing the Common-wealth is looked upon as a Pupil in prejudice of which the Magistrates have no Power to determine any thing; but they can by reason of some urgent necessity defer and not put Actions forward against private Persons, but reserve them for better Times: To remit and disannul them by reason of some present necessity they ought not to do, because 'tis the part of the Government continually to have private Men in its Debt, tho' they are not able to pay. That which also at present seems to be most just is to be esteemed

steemed unjust, and therefore to be laid aside, if it should afterwards prove to be a bad President for the Government.

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## C A S E L I.

*What good Remedy is there to be used to prevent suing for Offices, especially by Strangers, who endeavour to get into publick Employments? And how useful and necessary are those Laws in a Government, whereby Penalties are not only inflicted upon Offenders, but no room left them for the future to be so, if they would?*

**T**He People of *Treves* in former times, as well as more laterly, acknowledged themselves under the Protection of *France*; but about the Year 1400. several *French* Men, through the favour and authority of the Archbishop of *Treves*, being advanced into publick Places, the People and Magistrates of the City took it ill, and therefore it came to be debated in an assembly of their prime Men, what was the best Method for them to remedy this Evil?

### *Opinions.*

The Archbishop urged divers Things for himself, and in favour of the *French*; and said,

1. That those of *Treves* stood in need of the Protection of *France*; and therefore it was necessary they should be in favour with them: and that this would be best obtained by allowing the *French*

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the liberty of enjoying publick Employments among them.

2. That the *French*, who had hitherto been preferred in the Government, had acted faithfully in their Stations, and done nothing against the Laws; and Lastly, that the Liberty of the Republick of *Treves* was reserved inviolable.

3. That that was not done contrary to the Laws, for there had been no Law made or enacted by their Ancestors, which excluded the *French* from attaining to publick Employments and Honours there; why therefore should they now think so hard of the *French*, and take their Advancement to be an illegal Practice?

Others excepted against this; and alledg'd,

1. That they stood in need of the Protection of *France*, but they were to take diligent heed least they should fall under the Dominion of them; seeing Protection brought Relief to a Government, but Dominion could introduce nothing among them save a miserable Servitude; and who could not choose but believe that if many *French* Men were advanced to Dignities in their Government, but they would have it in their Power to change the Form thereof? For all Things are subject to the Will and Humour of those, if they are inclin'd to make any Attempt upon the liberty of the Government; and 'twas not an easie matter to resist those who have the publick Magistrates with them, and Power and Arms on their side: That they were of Opinion, the favour of the *French* and the increase thereof was a Benefit to them, but it must be so managed as to be consistent with the Good and Safety of the Government. Nay, the *French* without being carressed with the advantage of this Honour, had Cause enough why they should give *Treves* their Help and Assistance upon all occasions,



cations; who, as they were their Neighbours, and were benefited or incommoded, as their Fortunes was prosperous or adverse, would have always a Cause and be under a Necessity of giving them Protection, tho' they were not gratified with other Kindnesses from them, which might endanger the safety of their Government. Lastly, Those People who deserve the favour of their Neighbours, and their assistance, by reason of the accumulation of their Fortune, endeavour to deserve it in vain, by conferring other Offices upon them, to the manifest detriment of the Government. Magistrates in this case ought to be free, and not to prostitute the Fortune of the Publick.

2. They did not deny but that the *French*, who had hitherto been advanced in their Government, demeaned themselves well; but were they like to continue so? That they oftentimes at first delude People with the best hopes, who being afterwards more established in Power, entertain the worst of Designs: But in case they should continue firm to the Interest of the Common-wealth, who would affirm that others advanced by the same Methods to Dignities, would be the same and pursue the like Interests? This ought to be the principal Care of the Magistrates, and is conducive to the safety of the Government, not only for them to advance those, who will not transgress, into publick Employments, but not to admit of any such into the Government, who can transgress, if they will, and that Foreigners were of that sort no Body doubted.

3. They did confess, they could not call what had been already done unlawful, neither were there any Laws enacted that hindred the *French* from having Places in the Government; but the Question was, whether all that was to be allowed

which was not unlawful? Evils were much more numerous than Laws; that good Laws sprung from corrupt Manners, and therefore Evil Manners were really in themselves no less so, before they were forbidden by Laws: And seeing that new ones arose every day not foreseen by our Ancestors, for which there were no Laws to restrain them, why should not Laws be made against them? Why should those Things be thought unlawful, which tho' hitherto not forbidden, yet there was a necessity they should be by Laws for the future; and therefore that thing ought to be accounted unlawful in a Government, not only which is contrary to the known Laws, but that also against which the safety of the Government and good Reason required Laws should be made, which once enacted ought to remain firm and inviolable.

But it was controverted in an Assembly of the Magistrates of *Treves*, which way the *French* might be put and kept out of all publick Employments, with the least displeasure on their part. Some thought it enough that the *French* for the future should not be allowed to have any publick Employments, and it depended upon their Power and Constancy to hinder them.

But this Advice was rejected as vain and frivolous.

1. Because they must give a Reason why they would not admit the *French* into Offices for the future, seeing there had been already so many of that Nation advanced into publick Employments among them: If the Will and Pleasure of the Magistracy of *Treves* was only offered as a Reason, this would be plainly to affront the *French* and to shew their ill Will towards them.

2. That was not enough, that they did suppose they might now be well affected to the Government;  
but

but that Men were unconstant, and therefore their Wills the most unconstant of all; that they might easily be allured and perverted by Briberies, Flatteries, other Artifices and Rewards. Neither was it enough to say that they were of the same Will and Counsel with themselves, and would remain firm therein, for what if others should for the future be put into Places of Trust, who should not be of the same Will and Counsel? and therefore they ought to establish some perpetual Rule, whereby the constancy of those now in Places, and such as may come in, might be necessarily fixed and made unalterable; and this might easily be effected by a Law: This therefore was to be enacted, that not only no *French* but also all other Foreigners should be excluded from all Places of Trust in their Government; for this would import that the *French* alone were not excluded out of a particular Aversion of them, but all others from Employments in the Government; not as they were *French* but Foreigners; and not out of any ill will or change of Affection towards them, but by a just and irrefragable Law.

*Resolution.*

This last Opinion prevailed, and in pursuance thereunto a Law was made against all Foreigners, and consequently *French*, whereby they were excluded from all Places of Trust in the Government.

*Event.*

And thus the Liberty of *Treves* was preserved from the Power and Authority of the *French* which endangered it,



*Judgment.*

All that ought to be accounted unlawful in a Government which is committed not only against Laws in being, but against Laws which ought of necessity to be enacted: For as there are usually two sorts of Evils that do daily occur, so some of them ought to be prevented and removed by present, and others by the perpetuity of Laws. Those Evils are to be remedied by Counsels, which according to the different Circumstances and Constitutions of the Government, may one while be accounted Good, and at another time quite the Contrary; but those Inconveniencies are to be removed by Laws and the perpetuity of them, which are always so and necessarily inconsistent with the security of the Government; and such Laws, as near as may be, ought to be enacted, whereby not only one or another may be deterred from the Evil by the fear of Punishment, but whereby all opportunities both of committing Evil, and imposing a punishment for it, may be entirely precluded; so that what *Tacitus* says of *Agricola*, may be fitly applied here, *That he chose rather to advance those into Places of Trust who would not offend, than to punish them that had offended.*

C A S E

## C A S E LII.

*Whether it be convenient to allow a Tolleration of Religion, to those People who allow of another Head in Spirituals, than that received and acknowledged by the Government they live under?*

**T**Here have been several Attempts made in *England* since the time of our happy Reformation of Religion, from the gross and superstitious Idolatries of the Church of *Rome*, to procure the Papists a Tolleration of their Religion; more particularly in the Reign of King *James* when the *Spanish Match* was in agitation, there were divers private Favours shewed to that Party, and a disposition in the Court, or at least in divers of the Kings intimate Council, who affected Popery, to have the said Tolleration granted; and many Arguments were used inciting him to it.

*Opinions.*

1. These urged that Catholics were the Kings best and most peaceable Subjects; the Puritans being the only Sticklers and Disturbers of the Royal Peace, trenching too boldly upon the Prerogative, and striving to lessen the Kingly Power; but if the King had occasion to make use of the Catholics, he should find them more faithful to him than those that were ever contesting with him.

2. Why should not the Catholics with as much  
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safety

safety be permitted in *England*, as the Protestants were in *France*? That their Religion was full of Love and Charity, where they could enjoy it with Freedom; and where Charity lay the Foundation, the upper Building must needs be Spiritual.

But these Arguments were quickly answered by the opposite Party, who proved,

1. That the nature of the Protestant Religion was computable with the nature of the Political Laws of any State, of what Religion soever, because it taught that the Government of any State whether Monarchical or Aristocratical, was supream within it self, and not subordinate to any Power without, so that the Knot of Allegiance thereunto was so firmly tied, that no human Power could unloose or dissolve it; whereas, on the contrary, the *Romish* Religion, acknowledging a supremacy in another, above that Power which sways the State, whereof they are Members, must consequently hold that one Stroak of that supream Power is able to unfinew, and cut asunder all the Bonds which tie them to the subordinate and dependent Authority, and therefore could ill accord with the Allegiance, which Subjects owed to a Prince of their own Religion, which made Papists intollerable in a Protestant Common-wealth; for what Faith could a Prince or People expect from them, whose Tenet it was, *That no Faith was to be kept with Hereticks*?

2. That the Protestants in *France* had merited better there, than the Papists had done in *England*, the one by their Loyalties to their Lawful Kings, having ransomed that Kingdom with their Bloods in the Pangs of her desperate Agonies from the Yoke of an Usurper within, and the Tyranny of a Foreign Scepter without; the other seeking to write their Disloyalties in the Hearts-blood of the Princes



Princes and best Subjects of this Kingdom; that the number and quality of the Professors of these different Religions in either Kingdom, was to be observed; for in *France* the number of Protestants were so great, that Tolleration did not make, but found them a considerable Party, so strong as that they could not have been suppressed without endangering the Kingdom; but a Tolleration in *England* would not find but form the Papists to be a considerable Party, witness their increase by that late Connivance, a Thing which ought mainly to be avoided: For the distraction of the State into several powerful Parties was always weakening, and often proved the utter Ruin thereof.

### *Resolution.*

These last Arguments prevailed, and so all Thoughts of a Tolleration to the Papists was for the present (at least in appearance) laid aside.

### *Event.*

What followed hereupon, was, that they were less impudent for a time, till other Revolutions and Circumstances of time gave them more encouragement and opportunity to shew themselves, and foment those unhappy Differences that terminated in one of the unhappiest Civil Wars that ever any poor Nation was afflicted with.

### *Judgment.*

Tho' it seems to be as it were an Injustice to allow some that dissent from the National Church, the Liberty of their Religion and Worship, when others are totally denied it; yet there may be some  
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Circumstances of time when it may very equitably and prudentially be done, as in the Case of our present Settlement in *England*; when to incourage any of the Religion of the abdicated Prince, would be to encourage the loss of our own Religion and Liberty to boot: But otherwise a right Tolleration ought to be extended unto all, since all equally plead Conscience, of which God alone is the Judge. Neither is it enough to say against the Papists, that they own another Sovereign besides the supream Authority of the Country wherein they live, since we find the Freedom of their Religion makes them good Subjects in *Holland*; and there can be no good Reason given why they would not, upou the like Terms, make as good Subjects in a Monarchical Government, unless it be in such a Case as is before hinted.

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## C A S E LIII.

*How the publick Revenue is to be let out and entrusted in the Hands of private Men, so as that the same may not be managed to the Loss and Detriment of the Common-wealth: Also, as to Contracts made upon that account with private Men, how it's not enough for them to attain their own Ends, without having due regard therein to such Methods as are not injurious to the Government.*

There were some private Men who formerly at *Amsterdam* Farmed the Excise upon Wine, for about an hundred thousand Florins for one Year, the Contract extending no farther then that  
space

space of time. It was also ordered by the Authority of the Magistrates that the Citizens should pay twenty Florins to the Farmers, for every large Hogshead: Now the Farmers, towards the latter end of the Year, when the Contract they had made was near upon expiring, began to make Bargains with some of the Citizens contrary to the Inclinations of the Government; and that they might reap more benefit thereby, they only demanded ten Florins Excise for each Hogshead, for by how the less Excise was paid, by so much the more liberally would the Citizens furnish themselves with Wine; and tho' they thus lessened the Excise, yet because there was more Wine imported and consumed, the Farmers got a great deal of Money by that Stratagem. It was therefore debated by the City-Burgomasters, and in the Assembly of the States, whether they ought to suffer the Farmers to take that Liberty in the managment of the Wine-Excise?

*Opinions.*

The Farmers alledged, they had full liberty, and might do as they pleased in that regard.

1. Because they did not abate any Thing that belonged to the Government but to themselves, when they demanded less Excise of the People, for the Excise of that Year was theirs, and by agreement allowed for their Use and Benefit; and it was free for every Body to make use of his own at his pleasure, and for his own advantage.

2. They did not for that Reason pay less Money to the Government, than they had agreed on; If they performed their Agreement, they owed the Government no more, and nothing farther could be desired of them.

But



But the Magistrates, on the other Hand, took that to be altogether unjust and not lawful, and that for this weighty Reason alone, which was enough of it self; for by this means they cunningly foresaw that the produce of the next Year's Excise would be eluded and made less; for the Excise by this Liberality or Artifice of the Farmers of this Year being somewhat lessened, People would take care to furnish their Cellars with more plenty of Wine, least they should be bound to pay the due, nay, a greater Excise upon account of that default the next Year: They therefore took that to be done to cheat the Common-wealth, while the Sum only due for one Year was as it were brought into the Treasury for the Excise farmed out for that Year, and they did in the mean time by this Artifice, as it were make use of the return of two Years.

#### *Resolution.*

They therefore thought fit for the future, when they made any Contracts with the Farmers, to insert this Clause in their Articles; that the Farmers should make no private Bargain with the Citizens in the manner already specified.

#### *Event.*

Thus it came to pass, that the Produce of the Excise for the following Years were entire, and reserved for the new Farmers, and consequently for the use of the Government.

#### *Judgment.*

As in all private, so also in publick Contracts,  
this

this chiefly is to be minded, that the Magistrates do not think it enough, that they have for the present obtained the end of the Contract; but they ought to prosecute and agree upon such Methods for attaining their ends, whereby the Government might always, for the future, obtain the same end whole and inviolable; for the more ways Men have of doing an Injury, so much the more Caution ought to be used in respect to Things entrusted to the Care of the Government.

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C A S E L I V.

*After what manner may and should adulterated Coin, whereof a great quantity is introduced into a Government, be restrained or remedied with the least damage to the Publick?*

**T**HE United Provinces sometime after their being erected into a free State, were often troubled with false Mony introduced among them, (which was easily done in those Countries where there was a great Commerce and Trade) and seeing this was the Cause that the Subjects were daily reduced to Beggery, as receiving less in value than they thought they had and enjoy'd because of the Cheat put upon them by such Mony; the Matter was taken into Consideration, what Methods the Government must take to satisfy the People, and how they were to purge the Nation of all the false Mony, which was as a Plague at the Heart of it, which had been put upon divers of the Subjects, especially by Foreigners, to their great detriment.

*Opinions.*

*Opinions.*

There was no Body who did not think the same ought to be rooted out of the Nation; but many of them were very doubtful as to the Method of effecting it: Some were forthwith for prohibiting the currency of the false Mony, and that under very severe Penalties: And others affirmed, without that were done forthwith, there would be a greater quantity of it daily brought into their Dominions: That to delay the executing of such a Decree or Counsel, was no other than to neglect the Care of the Subject, and to countenance Evil Men in dispersing of bad Mony, who would not fail to be diligent in their wickedness, and so increase the detriment of the Publick.

Others affirmed, they did not like that Advice, being of Opinion, That the Subjects should first have notice of it, and a time be limited by a publick Edict, which should determine when such false Mony should be no longer received.

1. They said, That many of the Subjects had now a great quantity of false Mony by them, which to forbid to pass suddenly and without any more ado, was no other than to impose an heavy Mult upon them; that therefore they ought to have timely notice given them, that they might by way of Traffick, or exchanging for better Mony with Foreigners and their Neighbours, pack away that false and forbidden Mony out of the Country, without any loss.

2. That they argued nothing to the purpose, who said that Evil Men would by the Benefit of so much delay, import a greater quantity of this false Mony into the Provinces; for this Warning given by the Government, would have the force of



of a Prohibition, and introduce no Inconveniency; for the People being forewarned, they would receive no more false Mony, and dispose of that which they had already in possession.

### *Resolution.*

They agreed, to interpose this wholesom delay and to fix a certain limited time, beyond which no false Mony should be received, but the currency or use thereof was totally to cease. Our Case lately in *England* was somewhat different, and so was the Remedy.

### *Event.*

And thus when the false Mony was suppress'd within the time limited, the Subjects found little or no Inconveniency from the false Mony which had been received before.

### *Judgment.*

As all Evil ought to be forbid in a Government, so Magistrates are seriously to mind, least by a too hasty Prohibition of the Evil, greater and more grievous Inconveniencies does arise therefrom: Now in the administration of a Government, you are to consider the difference of the Malefactors and Sufferers: The one are wicked, the others miserable; the first should be forthwith punish'd, and the Sufferers should gradually be relieved, least further detriment should arise from the said Evil, and the sudden remedying of it, which, as in this Case of bad Mony, so in other publick Affairs, is frequently found to be a wholesome Practice.

C A S E.

## C A S E LV.

*How the smallest Stipends are to be allowed to them, who hold such Places in a Government wherein no limitted but the utmost Care and Industry is to be used, and how they may otherwise be fully rewarded: Lastly, what Methods are to be used in a Government in respect to all Stipends.*

THE Republick of *Venice* had appointed divers Officers, whose Business it principally was to punish the Guilty, and seize Offenders against the established Laws of the Country; now upon the first establishing of them in the beginning of their Common-wealth, they had but small Salaries, and almost none assigned them, wherefore the Officers frequently moved that the same might be increased: For which Reason it was now and then debated in the Senate of *Venice*, whether it would be convenient to increase the Officers Salaries, and for them to recede herein from the Institutions of their Ancestors.

*Opinions.*

Some were for increasing them, and alledg'd, That it seem'd a just Thing, that those who took care of the Affairs of the Republick, should have such a Reward assigned them out of the publick Treasury, as might be fit for their Incouragement in their Duty, and sutable to their Dignity: The Reason was why they were now to deviate from the

the Institutions of their Ancestors, because the Care and Business of the Officers were increas'd with the Republick, and every thing was now dearer than formerly: The perpetuity of ancient Laws ought not to be more durable than the Cause of them, which when once altered or taken away, why should not the Orders of their Ancestors be changed or repealed?

Others opposed this, and said, The Officers were sufficiently provided for with such Salaries as they had; that their very Places without any increase of Salary, brought them Profit enough; for seeing almost all the pecuniary Fines fell to their share, and that they had frequent occasion for laying such Fines upon Persons, by reason of the great increase of People in the City, they were mightily helped thereby.

To this they farther added, That their Care would be double when they had but small Salaries, whereas the increase of them would but make them flag and negligent.

That it was the Officers part, by their Care and Diligence, to make themselves amends for the smallness of their Salaries; the more Criminals they took, the more Money they got by the Fines laid upon them; but if their Salaries were increased, they would hardly think of them. Lastly, that the largeness of their Stipend would injure their Care, and the smallness thereof be a means to stir it up. That this was the Thing which weighed with their Ancestors, and that still the Cause of their Regulations was in being, nay it was greater now than formerly, by the increase of the Republick; and therefore they ought not now to resolve upon any thing which should be a means to lessen the Care of the Officers of the Government.

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*Reso-*



*Resolution.*

They therefore resolved that the Officers should have only their usual small Salaries, according as was wisely order'd by their Ancestors, that so by the quickning of their Care, the Affairs of the Government might be more minded.

*Event.*

The Consequence was, that the Officers used more Care in the discharge of their Duty, which by how much the greater it was, the more Profit they received to compensate for the smallness of their Salaries.

*Judgment.*

Seeing the publick Treasures are exhausted by Salaries, every Government ought to be very wary in the ordering of them, which ought to vary according to the diversity of Cares and Employments Men are engaged in.

There are some Offices where there is no other Profit arises but the bare Salaries allowed the Officers from the Government; the same ought to be allowed in such a proportion as might be suitable for the support of a Man's Family and his Dignity. There are Dignities, which as they are attended with much Care, so they are also with great Splendor. It would be proper to put Rich Men into such Employments, with the allowance of small Salaries; for there is here a Splendor which may serve instead of a Salary, wherewith seeing the Ambition of rich Men as satiated, they think they are well used. Thus in *Holland* the Burgo-masters

masters and Magistrates, who are chosen from among the Worthier Citizens, have very little and in a manner no Salaries allowed them; that Dignity which sets Men above the Common Level, serves them for all: Just so it was of old in the Common-wealth of *Rome*, the Senators had small Stipends, but great Wealth; small Stipends, because the Glory of their Dignity was sufficient for them: But great Wealth, whereby they might be enabled to sustain the Burden of so honourable an Employment.

There are some Offices which are very profitable if accurately and industriously looked after; nay, by how much the more Care they bestow upon it, so much the more will their Profit be: They have in a manner no Salary, but their Care and Diligence will make it up; for then their Care stands instead of a Salary, which by how much the greater 'tis, by so much the more beneficial it is like to be to the Government, and the Persons that are vested in those Employments, whose Business 'tis to look after the Transgressors of the Laws, part of whose Fine falls to their share; and therefore they look more narrowly after them who are Offenders, and compelled to pay a Fine.

There are also some Offices wherein Persons can and ought to give us some certain and clear Instances of their Vigilancy; now such Persons ought not so much to have Salaries assigned them, as some certain Reward for every proof they gave of their diligence; for by that means their Care would be doubled, for the benefit of the Government. And thus in some Governments, those Offices have a certain Reward assigned them instead of a Stipend for every Criminal that is taken up, imprisoned, and convicted of a Capital

or some other less Crime, and this in proportion to the heinousness or levity of the Crime committed by such Offenders.

There are some Offices which most private Men would be for enjoying and exercising, but these are not so much to have a Salary assigned them, as to be exempted by publick Authority from paying Taxes as long as they are engaged in such Offices and Employments; but of these Things enough.

### C A S E LVI.

*How some Occurrences of State may be better dispatch'd by a present Managment, than to have a perpetual Decree made concerning them: Also, how those Decrees that are limited to certain Persons and a fixed time, are far more useful than those that are more extensive and unlimited.*

**W**Hen the *Dutch East-India* Company was established, as well for the detriment of the *Spaniard* who was then the Common Enemy of the States, as for the improvement of Trade and Navigation; their Power increased so, that two of the Directors of the Society should every three years be sent into the *Indies* to take care there of the Company's Affairs: But seeing their Navigation was frequently interrupted, and Ships taken by the *Dunkirkers*, and therefore some of those Directors fell into the Enemies Hands, the Matter was cunningly and notably debated, whether those



those Prisoners ought to be ransomed at the Companies Charge, and so a particular Order made for that purpose?

*Opinions.*

Some were for ransoming the Prisoners at the Companies Charge, and enacting of such an Order as was proposed, saying,

1. That it was very just, if those who took upon them, in the Companies Name, to go and discharge that Trust, should receive any Damage thereby, that the Company, and not they, should bear the Burden of it; for those that were to reap the Profit, ought to bear the Burden and Inconveniency; if that therefore belongs to the Society, as it did, the Inconveniencies ought justly to be born by it.

2. Unless the Company would ransom those Prisoners, there would be none, for the future, that would be willing to go upon so necessary an occasion into the *Indies*; and therefore they ought to make an Order, whereby the Ransom of the Prisoners should be paid out of the Companies Stock: That the Right of all Societies claimed this, that whatever any Member suffered upon account of the Company, and beset him in executing their Commands, it was not a single Person, but they were all alike to suffer and make Satisfaction for the Damage sustained by him.

Others argued against this; and said, That the Prisoners ought to be ransomed with the Companies Money, but not in their Name, and opposed the making any standing Order for it: Their Reasons were,

1. The Prisoners ought to have been ransomed with the Companies Money, because it seemed ve-

ry just and reasonable, they should do so for the Reasons aforesaid.

2. But they ought not to be ransomed in the Companies Name, but the Terms for ransoming of them should be privately transacted with the Enemy at the Companies Charge: For seeing there was no certain Ransom set upon any *Dutch Prisoner* taken at Sea, but a greater or less Price would be exacted, according as the Prisoners were more or less wealthy, and the Riches of each private Man would be thought to be less than that of a whole Company, if they came once to know that the Price of the Ransom was paid in the Company's Name, the *Dunkirkers* would require a great deal more from them or the Prisoners, if they treated with them for their Ransom in the Companies Name.

3. For this very Reason it did not seem convenient they should make any standing Order for that end, for when that was known, the Enemy would always exact a greater Ransom for them, and the Deputies of the Company, would not be so industrious and resolute to defend themselves against the Enemy at Sea, as knowing they should not be damnified in their own Fortunes by their Captivity, and then the Prisoners would offer a greater Ransom in the Companies Name, than otherwise they could have done.

### *Resolution.*

The last Advice was looked upon to be the most prudent and cunning, and the Company thought fit, as occasion required, to pay the Charge and Ransom of such Persons, by making use of the private Name of the Prisoners, and concealing the publick one of the Society.

*Event.*

*Event.*

By this Method they made the Redemption of their Prisoners out of the Hands of the *Dunkirkers* more easie, and the Charge less, than the *Dunkirkers* would have exacted, if they had known they had to do with the Company it self.

*Judgment.*

There are some Things which upon urgent occasions and necessity, it's lawful and just to do, which yet it would be the highest Imprudence necessarily to establish by a perpetual and immoveable Decree; and therefore such Decrees ought to be very sparingly practised in a Government: For Example, no Body will deny but that a Soldier should have so much constant Pay allowed him, yet there is no Reason for making such a Law, that every Soldier shall receive his Pay every Week, for the Government might be brought under such a necessity and streight, as not to be able to let each Soldier have his Pay every Week; for in such and the like Cases, it is ever better to use the Liberty of present Counsel, than be tyed to the Slavery of a perpetual Decree: They will find many Things of this nature in a Government, who carefully mind it. It's convenient for Citizens to go out now and then and bear Arms, that they may be expert in Military Exercises when there is occasion; yet it's not convenient for the Government to make a perpetual Law for limittting the time, when that should be always done, for there might be at that very time Tumults or rather Factions among the Citizens, by reason whereof it would not be proper to draw out the Trainbands of the



City, and march with their Arms. Again, every Government stands in need of some Commander in chief in respect to Domestick and Military Affairs; but how great his Power is or always ought to remain is not to be regulated by a perpetual Law, for if that were done, his Successors would make use of it, and they must find in process of time, that so much Authority conferred upon their General must be prejudicial to the Government, those that came after not demeaning themselves as well as the former; and therefore in such a Case, it would be much better to make a personal than a perpetual Decree: That I call perpetual, which is made for all those who shall afterward arrive to the same Post: Personal which is done in favour of the Person now only invested with that Dignity; whence notwithstanding all the Corrupt Decrees of the Senate of *Rome* under the first Emperors, this only seemed to be always very laudable, that when they assigned to *Augustus*, *Tiberius*, and others the greatest Power, yet they confined the same to their Persons, and not to all the Posterity of the future Emperors. Tho' the Senate, as not being able to cope with the great Power of the succeeding Emperors, did not reap the benefit of this Precaution: And as for those Things which cannot be equally useful in respect to the Change of Persons in Power, it's always convenient they should be given to those that are then invested therewith, and not to their Successors; for those Things which for the present may be very good, may for the future be found hurtful, and therefore in such Cases a regard is to be had to the time present only; for which end, I am mightily pleased with that common Form of Decree however it was made, which runs, That something was done *per Provisionem* (*Provisionally*).  
It's

It's no polite Expression, but yet wary and very useful in Matters of State: We must therefore have a care, as much as may be, that we do not impose the Slavery of a perpetual Decree either upon our selves or others, who are after us to come to the Helm of Government; for they are oftentimes found incapable to supply the present and unexpected Necessities of the Government, who are tyed to follow the Rule of a perpetual Law. This is a most useful Precaution with a regard to the frailty of Human Understanding, and the multiplied variety of Human Affairs, for we are oftentimes flattered with a mighty Opinion of present Things, which upon a Change of Times and Things are found afterwards to be very injurious to us, seeing our Industry will not reach so far as to foresee all that is to come: What a piece of Folly is it for us, either to have so great an Opinion of present Things, or to rely so much upon our own Judgment in respect to them, as by the Authority of a perpetual Law enacted by us, to deprive both our selves and others for the future of taking better Measures and Counsels?

C A S E

## C A S E LVII.

*Whether a Prince that has made a solemn Renunciation of Right to a Crown upon Marriage, or his Descendants, can have any just Claim to that Crown, as being next of Blood? And how far may this Matter be extended?*

A Peace being to be made betwixt *France* and *Spain* in 1659, by that which was called the *Pyrenean Treaty*, both Parties, in order to facilitate the same, were forward to treat of a Match between the *French King Lewis XIV.* and the *Infanta Maria Theresa*, Eldest Daughter by the first Venter to *Philip the IV. of Spain*, which Match was then agreed on and Consummated: But the Princess first made a solemn Renuntiation of her Pretensions of Right to her Father's Dominions, and the same was as solemnly ratified by the *French King*; notwithstanding which, there were several Libels scattered up and down, to set forth the Pretentions of Right the *French Queen* had to some of the Territories of *Spain*, in order to favour the Irruption of the *French Arms* into the *Spanish Netherlands*, in 1666. and a great many People will still say, that the *Dauphine* her Son has an undoubted Right to the Succession of *Spain*, and that his Mother had not Power, by any previous Contract, to dispossess him of his natural Right to the said Dominions.

*Contrary*



Contrary Opinions.

1. It has been justly alledged, That the Treaty of Marriage at the *Pirenees*, and the *Infanta's* Renunciation, was an essential Member of that Peace; and tho' they were digested into different Instruments, yet they made up but one Treaty, as was expressly declared in the XXXIII Article, wherein speaking of the Contract of Marriage, are these Words, added, *Altho' it be separated, hath the same Force and Vigour as the present Treaty of Peace hath, as being the principal part thereof, and the most precious Pawn of it's greater Security and lasting.*

2. That as well the said Treaty of Peace, as that of the Marriage, were Contracts of Sincere Faith, and not of strict Law; and for the Rule and Ground of their Subsistence and Interpretation, we should refer our selves to the Causes and Ends which both sides did propose to themselves in Treaties, and the Utility which was to arise from thence to the publick Good.

3. That these were Treaties betwixt two great Monarchs, who were not Subject to any particular Laws, nor dependent upon the Customs of Places; that they were the Fundamental Laws both of the one, and of the other State, which were not to be mentioned but by the Laws of nations; 'twas a natural Obligation which they contracted, that could not be broken by any Civil Law: It was properly the indispensable Law of Sovereigns, which they could never violate nor alter without Unjustice, nor correct but by common Consent: They were above particular Laws, which could be chang'd and augmented at their pleasure; as the Codes *Henry* and *Lewis*; but those which tyed them to an Equal with a reciprocal Knot,

Knot, and which were the Foundation of the publick Tranquillity, could never receive any other Form than that which the publick Seal had imprinted upon them.

Princes who are absolute Sovereigns, when they acted as such, had but two ways to terminate their Quarrels, viz. Arms and Treaties, the first was but a means to attain to the other; but if the latter had not a solid and immoveable Foundation, and if they were allowed to break it upon the least Subtilties of private Right, there was no more security in the World; and this was to reduce it to its first Confusion, which gave occasion to the bringing in of Kings and Magistrates, to prevent Force from being the sole Arbiter of Differences: Now as Princes were established to remedy such a Disorder among their Subjects, so were Treaties likewise introduced to work the same effect among Princes. *France* admitted of no Proscription to the prejudice of the Royal Domain, she received no Judges nor Procceses, there was nothing then but publick Treaties, which could bound her Pretensions, that extended themselves almost over all *Europe*; and if they suffered even this to be excluded, there would be no other means remaining, but that of Force, which silenced all Laws, and Kings should put themselves absolutely out of all Commerce.

4. That that Renunciation was the Soul and inseparable Condition of the *Pyrenean* Treaty, and the Marriage, without which it had never been either designed or concluded, nor could consequently the Treaty of Peace.

5. That it proceeded not from the bare motion of *Phillip IV.* or a particular Inclination towards the Children of the second Bed, but out of an inevitable necessity, flowing from the *Salique* Law; and

and the unjust extension which *France* made of it to all the States which Fortune had put into her Power: This necessity, and the other of the publick Good, with the Conservation of that August Family, had reduced the *Infanta* to the Condition of never being able to be Queen of *France* but by that Renunciation.

6. It was evident there was no Constraint nor Violence used on her Father's part towards her, whose Sweetness and natural Moderation, had shined so eminently throughout the whole Course of his Life not only towards his faithful Subjects, but likewise towards his Enemies and Rebels, that many conceived it had been extended to an excess. It was not to be presumed the same Heart which had in it an inexhaustible Treasure of Bounty towards all the rest of the World, should have nothing but Rigour and Harshness for a Daughter, who was the center of his choice Delights: If there had been any Constraint, the effects would have been seen by some Complaint, or Action of the *Infanta*; and if her respect to her Father did hold them up, her Discontent would have appear'd in her very Eyes and Face: But on the contrary, she signed that Act with so pleasant a Resolution, that it was easie to observe she much more esteemed what she was to acquire, than what she lost thereby; and the Tears, which she since shed, upon the account of the War, which was against her Mind, tho' they made her an innocent pretence, sufficiently witnessed that she disapproved of the Cause of it, as much as she detested the Effects, and were authentick Ratifications of the free Consent which she gave to this Renunciation: If she had done it unwillingly, she would not have failed to make Protestations against it, as soon as ever she found her self in a Condition to declare without



out Fear, and with the applause of all *France*, the true thoughts of her Mind; she her self had doubtless confessed, that it was neither Respect nor Obedience, no nor Complacency, but the free Choice of her own Inclination and Prudence; that the King her Father neither imploy'd his Paternal Power, nor Royal Authority, Commands, Threats, nay, not so much as Perswasions to induce her thereunto; but that he satisfied himself by proposing nakedly the State of Affairs to her, that he might leave the entire decision to her self. That of the two Affairs, she had made choice of the most advantagious and most convenient, that she never repented that Choice, and from thence it might be concluded, that that Act having been made without any Fear or Violence, it could not be called in Question by reason of any exception of the Civil Law; *Qui metum non intendit, Promissio valide Fiat, nec scrutabimur quid aut quatenus ejus intersit, quæ Juris Romani sint subtilitates*; says *Grotius, de Jure Belli & Pacis*.

7. There was no Lesion, seeing she acquired a greater Benefit than that which she had renounced, she not being able to possess them both together by an irremediable Repugnancy: It was therefore to be reputed a kind of Permutation, rather than a Cession, because she gave to obtain, and quitted to get: The Laws gave no rise to an entire Restitution, where the Condition of the Minor was rendred more advantagious by the Contract, and in this Case did permit Alienations even of the Goods of Pupils.

Farther, they ought to consider, that the Marriage, as had been said, was not a private Contract, but as a Member of the Treaty of Peace, which necessarily related to all the other Conditions: By the said Treaty, and consequently in consideration

sideration of the said Marriage, were granted unto the *French* King a great quantity of Provinces and States, which did so notably increase his Dominions, as did much exceed the value of whatever the Queen of *France* might pretend to for her Legal Portion; and this Concession did redound to the advantage of the Queen, by that inseparable conjunction which united all her Husband's Interests to her, but to no farther Pretensions either for her self or hers: Whence it followed, that that Cession ought to suffice her in the room of all Pretensions to Portion or otherwise, since the Marriage was made in favour of the Peace, and the Peace in consideration of the Marriage; and that they were two indivisible Things, which could not have being the one without the other, and so strongly chained together, that the Conditions of the Marriage were included in the essence of the thing; if the Cause, the End, the Effects, and whole Contents of the Negotiation be considered.

8. Those of the opposite Party, who did alledge that the Queen was under Age when she made her Renunciation, and consequently could not prejudice her own nor her Son's Right, shewed themselves to be guilty of affected Ignorance, both of Fact and Law; no body could doubt but the Princes and Princesses of *Spain* were out of Minority before the Age of twenty, as it was expressly declared in the Renunciation in these Words, *And as by the Grace of God I do find my self to be in the Age of Major, and more than twenty Years old:* Royal Persons were to be held out of Minority, as soon as they had attained to the years of Youth, and tho' one should consider the *Infanta* as a private Person, and that that were to be regulated by the Laws and Customs of private Successions;  
It

It was a certain Truth, that by the local Customs upon which *France* had founded her Right, both Sons and Daughters were Majors at the age of twenty Years, and might freely dispose of their Fiefs even in relation to their own Life, without any dispensation from the King, or Authority of a Guardian.

9. It was an unsupportable Injury to the memory of *Phillip IV. of Spain*, for the *French* to accuse him to have disinherited his Daughter the *Infanta*; for on his part there was no positive Act, more than a simple Consent and Authorizing of the free Renunciation made by the *Infanta*, who by a voluntary Choice did prefer the Crown of *France*, before that of *Spain*, which she looked upon to be very remote; the Kings last Will was nothing else but a Confirmation of the same Deed, which he supposed to be legal, being framed upon the Plat-form of those Things which were established by the Peace; and if the Renunciation was just, it must necessarily follow that the Kings Will, which was but a consequence of it, was so likewise; and this is a further Argument against the Succession of *France* to *Spain*; for if the thing was just in it self, and received in the Person of the Mother, it could not be unjust in her Successors, who had no right but what they derived from her; and if it was permitted private Persons to make Entails to the exclusion of Daughters and their Offspring, in favour of Collateral Lines, if the Salique Law could perpetually deprive them and all their Descendants of an hereditary Kingdom; what Unjustice could be found in this, that *Spain* had desired that Renunciation, to the end they might not fall into a dependency upon a Stranger-Kingdom? They must Consider that the *Dauphine* of *France* had never had a being in the World, nor

any



any share in the Crown of *France*, if the Queen had not renounced; and if a Son of *France* cannot be at one and the same time both King of *Spain* and *France*, he must lay the fault upon the *Salique* Law, that devoured all it posselt, and oblig'd all other Kingdoms to provide for their own safety, by fitting Precautions, and by the natural Law, *Quod quisq; Juris.*

10. Again, the way which was left for the Queen to re-enter into her Rights in case God should afflict her with a Widowhood without Children, was an effect of a Fatherly Tenderness and Justice, which would needs establish her Happiness in all Points, by putting her either in a Condition to reign gloriously in *France* by her fruitfulness, or to have wherewithal to comfort her in case of Barrenness, by re-entring into her Rights to the Monarchy of *Spain*: And it doth clearly shew that in this Renunciation her Person was not regarded, but only the Obstacle inconsistent with the reason of State, which did suspend the effects of that Love they had for her, and that rendred the Renunciation the more valid, because it was not absolute, but left a Gate still open for her Re-entry, as often as the essential Impediment did not come in the way: They were far from wishing her Barrenness, or exclusion of her Offspring, when ever they might be received without subjecting the Kingdom of *Spain*; nay, the way was opened to place her and her Successors upon the Throne of *Spain*; *if for publick Conveniencies and just Considerations she should marry with the Consent of the Catholick King, and the Prince of Spain her Brother*: They are the Words of the Renunciation, whereby it was manifest, that the fundamental and sole Cause of that Renunciation, was to exclude *France* from the Right of being able to an-

next the Monarchy of *Spain* to his Realm and Laws, and not to deprive the Queen or her Issue of it, when no other thing should hinder them from being admitted.

II. It was farther urged, That it was lawful for Princes to resign and renounce their Hereditary Kingdoms in favour of the next Heir: The Example of *Charles V.* *Phillip II.* and Queen *Christina* did evidently prove it: And even in Elective Kingdoms, where it seemed that the Obligation to reign was more indispensable and less capable of being retracted, than in those which are Hereditary, because it was established by a reciprocal Covenant, and an Obligation, which such Kings have Voluntarily imposed upon themselves, we have known *Henry III.* renounce the Crown of *Poland* openly by his Flight, and if the *French* themselves had constrained *Childerick III.* and some other of their Kings to retire into Monasteries, and made them renounce their Hereditary Crowns even in favour of Strangers, why should it not be lawful for Princes to divest themselves thereof willingly, to obtain a greater advantage, and for the bare desire of quietness? *John* King of *Armenia* quitted the Kingdom to his Nephew *Leon*, to enter into the order of *St. Francis*; a great many Princes and Princesses, the lawful Heirs of Hereditary Kingdoms, had validly renounced them, either for the publick Good, or their private Tranquillity to embrace Religious or retired Lives, as *St. Bridget* in *Sweden*, and others in *Hungary*, *Germany*, and *Spain*; *France* also was not without Examples of that Kind: *Carloman* the Eldest Son of *Charles Martel*, parted with his Kingdom to his Brother *Pepin*, that he might wholly dedicate himself to the Service of God. Now what those Princes have been able to do, either out of Devotion or the

love

love of Liberty, the *Infanta* might do with a juster Title for the good of the Peace of the two Monarchies: The fundamental Law which called her to the Succession, was in her favour, and not for constraining her: It was a Right that was given them, but not a necessity imposed upon them; It was not a forbidding Law, which we could not renounce. The King her Father could not, without the consent of the States, exclude her against her Will, or make her incapable of the Succession; but she might voluntarily renounce, for her greater Good, and for that of the State it self, and that too with the general applause of the People over whom she might have been Queen.

12. Lastly, tho' the ancient Laws were in some Kind against the Renunciation of future Successions, yet the practice of them now was abolished for this respect; and the contrary so well established all the World over, that the *French* Laws did unanimously agree to it, and even that *he who hath renounced some future Successions, cannot recal by the hapning of Children what he hath quitted.* Epeisses Tom. 1. p. 407.

### *Resolution.*

No Arguments, tho' never-so strenuous, could divert the *French* in a prosecution of their pretended Right upon *Brabant*, &c. which they actually invaded with their Arms, while the *Spaniards* did what they could to defend it.

### *Event.*

The Triple League made between *England*, *Holland*, and *Sweden*, brought the *French* to grant a Peace to the *Spaniards*, tho' with Loss, and the Pre-



tentions of the *Dauphin's* Title to the whole Dominions of *Spain*, has been more or less obtruded ever since her decease, in Case of the death of his Catholick Majesty without Issue; till of late that has been determined by a Treaty made between *England, France, and Holland*, for the Partition of the *Spanish* Monarchy, whereby, in Consideration of the *Dauphin's* Title, they have assigned him the Kingdoms of *Naples, Sicily*, and the other Islands belonging to the Crown of *Spain* upon the Coast of *Tuscany*, with the Province of *Guipuscoa*, Marquisate of *Final*, &c. after the decease of the King of *Spain* without Issue; besides the Dutchies of *Lorrain* and *Bar*, for which that Duke was to receive the Dutchy of *Milan* as an Equivalent; while the rest of the *Spanish* Dominions, both within and without *Europe*, were to go to the Arch-duke *Charles*, the Emperor's second Son.

### *Judgment.*

As 'tis very manifest that the main scope of the Renunciation made by the *Infanta* of *Spain* before her Marriage with the *French* King, as well as the Will of *Philip IV.* tended, That none of her Issue or Descendants should inherit the *Spanish* Crown; so the *Dauphin*, the principal Pretender, in all humane probability had never had a Being, if that Renunciation had not been made; and then I am sure he nor his could put in no Claim. That he is next of Blood to the Crown of *Spain* is not doubted, but that always does not entitle to a Right to succeed; and surely if any deference be to be had to a League so solemnly made as that of the *Pyrenees*, without which he had had no existence, he can have but very little rightful Pretension, since the very Condition of his being, im-  
plied

plied his never being King of *Spain*. However, he has now his share assigned him out of that Monarchy, which is the same thing as giving it to the Crown of *France*, which is looked upon by most People to have too much already, and that if before she was barren of Sea Ports and the like Conveniencies for Shipping both for Trade and War, she will be now abundantly furnished therewith, which certainly should make those Nations that have joyned with her in the foremention'd Partition, be the most Jealous of, of any People in the world: But there are *Arcana's Imperii*, and Reasons to be given in time for Actions, that to the unthinking Vulgar, seem very extravagant and prejudicial: But after all, *France* (one should think) might have been content to have those Countries, assigned to the *Dauphin*, erected into a new Monarchy in the Person of one of his younger Sons, never to be united to the *French* Crown, since 'tis not many Ages past, that they Constituted a distinct Kingdom; neither would this have altogether looked so like a new President as the Partition it self, in which one of the Nations concerned is now almost as barren of Heirs, and in as bad a State, as to the uncertainty of the Succession of its Crown as *Spain* it self, tho' there is a great deal of difference between the Power of the two Nations, and the nature of their Constitution, else who knows what effect such a President might have upon neighbouring Princes, to take upon them also in their turn to determine our Succession; especially, if Matters stood so as if there was any likelihood of bringing in the Mother-Church again to the exclusion of the Northern Heresy,

Since the Composing of this the Case is alter'd by the Death and Vill of the King of *Spain* in favour of the Duke of *Anjou*, not the *Dauphin*; but Matters being not yet fully settled, I shall suspend my Thoughts upon them.

## C A S E LVIII.

*How may the publick Revenue be Farmed out to private Persons, for a certain Sum of Mony to be paid yearly into the Exchequer?*

**T**umults having frequently hapned in the *Netherlands*, about Monies raised to carry on the War, the States about the beginning of the change of Government had presently under their Consideration what Method they should take to lay Taxes upon the People. Among other Things there was a wary and long Dispute held between the chief of them concerning the Method of Collecting them, whether they should be gathered by certain Persons deputed by the Government for that purpose, who were to have yearly Salaries allowed them; or whether they ought to be let out to Farm for a certain Sum of Mony, and to those that bid most, as in a publick Auction?

*Opinions.*

Some were of Opinion they ought to be collected in the Name of the Government, by certain Persons appointed by the Magistrates, &c. who were to be paid for their Pains therein.

1. Because Persons acting for the Publick carry a greater Authority with them than private Persons, and there was a more particular occasion for that in the execution of a thing that was hated by the People; that the People hated Taxes above any thing, and therefore the Authority of private Persons was not sufficient for the collecting of them.

2. Be-



2. Because the yearly Produce of some Imposts was uncertain, particularly those that were laid upon Wine, Ale, and other Edibles and Necessaries: For Instance, in one City they sometimes spent a thousand and sometimes two thousand Hog-sheads of Wine in a year, and therefore they asserted, they could not see how a certain Impost laid upon every Tun of Wine could be Farmed by private Men: For private Men would either Farm them for a greater or less value than was laid on them of the Farmers; if for a less Price, that would be to the loss of the Common-wealth; for the Farmers then would pay the Government less, than they received from the Taxes in the Government's Name.

3. That the number of People in their Cities increased every Year, and so proportionably, there would be a greater Consumption of Provision among them, and therefore the Product of the Impositions increased; if therefore they should for a certain Term of Years Farm out for a certain Sum of Money those Imposts which would be daily upon the increase, this would be no other than a considerable Dammage to the Common-wealth, and the Benefit arising from the constant increase of the Imposts, would redound to the Interest of others.

4. Moreover, this was a thing very dangerous and hazardous to entrust the publick Produce, that is, the very Riches of the Common-wealth in the Hands of private Men; for what if they should promise the payment of large Sums of Money in consideration of their Farming the publick Revenue, but afterwards perform little or nothing? What if they should convert the Publick's Money to their own particular use? And what if they should find themselves unable at the end of the

time to make up their Accounts, and so withdraw? Would not the Government be at a fine Pass? Those Things ought to remain in the Hands and Power of the Common-wealth, without which the Common-wealth cannot subsist.

Others opposed these Sentiments, and were of Opinion the publick Revenues ought to be let out to Farm to private Persons for a certain yearly Sum of Mony: For they took notice that there were two sorts of Impositions or Taxes in every Government.

Some there were laid upon Certain Things, and therefore their Produce might with certainty be accounted for; for Example, some Taxes were laid upon Houses or Tenements, and as the number of these was certain and definite, and might be made to appear to be so, so certain must the returns be that should arise from the Taxes laid on them. Other Impositions there were which did arise from uncertain Things, and which were not always alike, but of a more fluctuating State and Nature, and they were such as were laid upon Wine, Beer, and other Things, of which there was sometimes a greater and sometimes a lesser Consumption; and as uncertain as the Number and Impost laid upon these were, so uncertain would the Produce of the Taxes laid upon them be.

Wherefore they were of Opinion, That the first sort of Taxes as being certain, might be collected without any more ado in the Name of the Government, by the Officers of the Common-wealth; but that the rest of them, as being of an uncertain return, might for a certain Sum of Mony be Farmed out into particular Hands.

1. Because the Subjects had room for defrauding and using clandestine Tricks in respect to the last, whereby they would easily elude the payment

ment of the Excise laid on them; they were therefore to make a diligent Enquiry into those Cheats; but private Men would make a more diligent search into them, as into a thing of their own which they had purchased to their Benefit or Loss, as they used a greater or less care in the management thereof, than into the publick Concern, from which whether the more carefully or negligently minded by them, the Benefit or Disadvantage would not redound unto them but to the Government; for it was to be observed every where, that every Man minded his own particular Concerns much more than that of the Publicks.

And therefore the Farmers of the Revenue would have as much Authority and more Care to collect them than the publick Officers; for by the Contract made with them, the Magistrates were to grant them sufficient Power and Authority to collect them.

2. That it signified nothing to urge, that because the return was uncertain, that none of the Taxes could be Farmed out for a determinate Sum of Mony which some private Men would agree to pay for them; for this very Reason should induce them to a necessity of Farming them out to private Persons: For it were better that the Government should in such Cases be upon some sort of a certainty, than otherwise to manage its Revenues, of which they were liable to be defrauded by the sinister Ends of wicked Men, and so would turn to little or no account to them, without they made use of the Industry of private Men in the collecting of them; for those Cheats would more nicely be enquired into and found out, by private Men, for the sake of a particular Advantage, than publick Persons could do it for the sake of a common Good.

3. It



3. It was also urg'd to no purpose, That the Farmers of the Revenues would sometimes receive more, and sometimes less than they were bound to pay; for whether this or that hapned, it would still redound to the Benefit of the Common-wealth; for if they were oblig'd to pay more then they received, the Farmers could not excuse themselves from not paying; seeing, according to the Terms of the Contract made between them and the Magistrate, they were indispensibly bound to pay what they promised; but if they should receive more than they were bound to pay, according to the Terms of their Agreement, the Benefit would not only redound to the Farmers, but to the Government also: For when the Taxes should be the Year following expos'd, as it were by way of publick Auction, to be let out to Farm, either the Farmers of the preceding Year being allured thereunto by the Profit they had received, or others for the sake of receiving the like Gain and Advantage, would Farm the same Taxes at a greater Price than was given the Common-wealth before.

4. Again, it signified nothing for them to say, That their Cities were changed every Year, and considerably increased in People; for they were not willing to let the Taxes out to Farm for many but one Year only; that so they might Yearly, as they found the state of their Cities mended or increased, find the old Farmers, or new ones, offer more Mony for the Revenues than they had done before.

5. Again, it was a vain Pretence in them to urge, it was dangerous to entrust the Concerns of the Publick in the Hands of private Men; for those Evils might be prevented by getting the Farmers to give the Government good Sureties, who should be

be obliged, in case of necessity, out of their own Fortunes, to make good the Mony the Farmers had agreed to pay the Republick, in case they themselves failed to do it: And if any one should object that even those Sureties might be sometimes incapable to perform what they were bound for, there is another ready way to secure the Government; and that is by obliging the Farmers by their agreement to pay such a proportion of the Sum agreed on for the Year, every Month into the Treasury.

*Resolution.*

This last Opinion was best approved of, as being the best for the Government.

*Event.*

It has been accounted, and found to tend from time to time to the good of the Publick.

*Judgment.*

Some publick Affairs are better left to the management of private than publick Persons, by a mutual Agreement for that end; and those especially which are uncertain, and require a more than ordinary Fatigue or Solitude, which those at the Helm care not to undergo; and therefore where there is a certain private and accurate kind of Industry required in an Affair that is otherwise of a publick Nature, the Benefit thereof is to be distributed between the Government and private Persons, by an agreement: For if they should do otherwise, the Heads of the Government would be less careful, and therefore less Benefit accrue unto the Publick.

CASE

## C A S E LIX.

*After what manner, upon the terminating of a Civil War and granting an Amnesty or perpetual Act of Oblivion, are we principally to take Care, least there be any room left for a Prince, against whom the Civil War was waged, under any Pretence or Interpretation whatever, to inflict afterwards a Punishment upon them who are entituled to the Benefit of the Amnesty?*

**I**N the time that the Duke of *Alva* was Governor of the *Spanish Netherlands*, some of the Provinces that had opposed the *Spanish* Faction and Interests, had Thoughts of returning again under the *Spanish* Obedience, upon certain Terms to be agreed between them; but above all Things there was an Act of Oblivion required for all that had been done during the Course of the Civil War. Now the Duke of *Alva* in general Terms put forth an Act of Oblivion in the King of *Spain's* Name, for whatever had been done against the King by reason of the Civil Wars and Tumults that had hapned in the Provinces: But all those were excepted out of the Act, who being not so much for taking to either side as following their own licentious Humours, beset the Roads and High-ways, and without any manner of Law or discipline wasted the Goods, Lands, and Houses sometimes of one, then of the other Party with Fire and Sword, and spared not the Lives of them; Thereupon the Matter was debated in the Assembly of the States, whe-



whether that method of making an Act of Oblivion was sufficient for their Security?

*Opinions.*

Some thought the same to be enough, and urged, First, That whatever had been transacted by either Party under the Name of the Parties, was abolished by a perpetual Act of Oblivion; that that was enough for those who only followed either Party, in defence whereof, they did no more than what the Law of Nations allowed every one to do in their own and others Defence.

2. That those Rovers and Authors of so much Cruelty and Barbarity, who followed not the Authority nor Ensigns of any Party, but only their own licentious Humours, were justly excluded from the Benefit of the Act, as being Enemies to all Men; for the wickedness of such Men ought not to go unpunished, under the pretence of a Civil War or Act of Oblivion, pitch'd upon for the reconciling of all Parties; and therefore by the excluding of them, they did both satisfy Justice, and provide for their own Security, seeing they could by no means be comprehended under the Name of the Parties.

Others, who were indeed more cautious, did affirm; That this excepting of certain Criminals from the benefit of the Act of Oblivion, was suspicious, and might be extended to theirs and others Ruin.

1. For that Restriction and excepting of some Persons did, as it were, cramp the general Benefit expected from the Act of Oblivion, which is indeed never more safe then when 'tis most general, for by that Restriction, there would be always Room left for the Prince to exercise his Judgment, and

and to interpret the Benefit of the Amnesty as he pleas'd, and hereby their Safety would be endangered: For suppose some should interpret the Actions of any Party, as committed only out of a licentious Humour, and for that Reason should be excluded from all the Benefit of the Act of Oblivion, therefore there was no wary Person but must see, that by such an Exception a way must be opened for the Prince to keep the Amnesty at what Rate he pleas'd, and to deny the Benefit thereof unto some whom it did not affect.

2. Therefore nothing but an Act of Oblivion, made without any such restriction, could make the People secure, for hereby all manner of pretence would be cut off, and no Power left the King to wreck his displeasure upon those he might be angry with: When a general Act of Oblivion is made, nothing, tho' never so hainous, can be laid to the charge of the Subject: But where all are not included, evil Princes, and such whose Hearts always broil'd with the remembrance of the Civil War, might interpret some Things to the prejudice of particular Persons; and so notwithstanding their dependance upon such an Act of Oblivion, their safety would be continually dubious and uncertain.

3. Lastly, it would be a better way for them now to extend their Amnesty or Act of Oblivion to all notorious Offenders whatsoever, than by the excluding of them, to give way, under colour of their Names, for an unjust Prince afterwards to seize upon those, in whose Favour and Security the Amnesty was made.

*Resolution.*

They agreed therefore that none should be exempted from the use and benefit of the Amnesty, and the Duke of *Alva* was also forced to comply with that Resolution; for the People would not otherwise submit to the Government of the King of *Spain*.

*Event.*

Hence the Benefit brought by that Act of Oblivion carried more Safety in it, and the use thereof could not, for the future, be denied any Subject by any interpretation their offended Prince could put upon it, or other pretence whatsoever.

*Judgment.*

Those Contracts between Princes and their Subjects are wisely made, wherein, by the removal of all Objections, there is nothing left to the interpretation of the Prince, which if it were otherwise, he might use the Agreement as he pleased, either to the detriment of the Subject's liberty or Safety; and this they are principally to mind in those Agreements, wherein a General Act of Oblivion is to be made, upon the terminating of a Civil War: In such Cases general Forms are best, for if any Exceptions are made, there is, or they always will find out a Cause for the circumventing of some afterwards, and therefore it concerns the safety of all Persons, that the remembrance of whatever has been done be obliterated by a perpetual Act of Oblivion, least by giving other Interpretations, Men may become chargeable with what they have done, and so be deprived of the Benefit of that Act to their great Prejudice.

C A S E



## C A S E L X.

*Whether two Kingdoms, under one Head, yet governed by different Laws and Constitutions, ought so to be united as to be incorporated into one; or how and what degree of Union between them, may be thought to redound to the Benefit of both?*

**W**hen King James I. came to the Crown of England, he was very desirous, among other things, for the promotion of the Good of his Scotch Subjects, to have an Act of Union made between the two Nations; but tho' this was not much relish'd by the English Parliament, yet in the fourth Year of his Reign, the King being loth to put the Business off any farther, the Union was much pressed for, and the Principal Instrument therein was the famous Sir Francis Bacon, then the King's Sollicitor, who came into the House of Commons prepared for it, and first moved that the Scotch might be Naturaliz'd by Act of Parliament.

*Opinions.*

This Motion was opposed by divers strong and modest Arguments, among which they brought in the comparison of *Abraham* and *Lot*, whose Families joining they grew to difference, and alledg'd those Words, *Vade tu ad dextram, & ego ad sinistram.*

To

To this it was Answered roundly, That that Speech brought the Captivity of the one, they having now disjointed their Strength.

But the opposing Party said, if they admitted the *Scots* to participate of their Liberties, they should be over-run by them; as Cattle (naturally) pent up by a slight Hedge, will get over it into a better Soil; and a Tree planted in a barren Place will thrive to excessive and exuberant Branches in a better; and of this there was a pregnant Instance in the multitudes of *Scots* in *Poland*.

The Reply hereunto was, That if they had not Means, Place, Custom and Imployment (not like Men but Beasts) they would starve in a plentiful Soil, tho' they came into it; and what Spring-tide and Confluence of that Nation had come over and dwelt in *England* during now four years of the King's Reign: Farther they would never live so meanly here as in *Poland*, since they had rather discover their Poverty abroad than at home.

Besides there was a Question, whether *England* had People enough, especially if they did but consider the drowned Grounds and common Wafts in the Nation; the ruin and decay of ancient Cities; witness how many served in Parliament for desolate Burroughs: Besides their Wafts by Sea, as well as by Land, whereby they suffered the *Flemmings* to carry away all their Fishing; The Sinews of their Industry to be slackned, and they wanting active Spirits to corroborate them by Example. Besides this, planting of *Ireland* which was a Kingdom that abounded with Rivers, Havens, Woods, Quarries, good Soil and temperate Climate, was an Argument of it: Neither could it be said that a Surcharge of People could be so prejudicial to a Country, since the worst of it would be an honourable War, to recover their ancient Rights, re-

X

venge

venge Injuries, or attain the Honour of their Ancestors.

Lastly, they ought not to forget the Considerations of Amplitude and Greatness, and fall at variance about Profit and Reckonings, which were fitter for private Persons than for Kingdoms.

It was objected on the other side, That the fundamental Laws of both Kingdoms were different, and it was declared they should continue so, and therefore it would not be reasonable to proceed to that Naturalization, whereby to invest the *Scots* with our Rights, unless they would receive and submit to our Laws.

It was answered, That in the Administration of the World under the great Monarch of all, his Laws are divers; there being one Law in Spirits, another in Bodies; one in Regions Celestial, another in Elementary; and yet the Creatures are all one Mass or Lump. That in the state of the Church, among People of several Languages and Stocks, there was a Communion of Saints, and they were all Fellow Citizens and Naturalizants of the heavenly *Jerusalem*, and yet the Ecclesiastical Laws, Politics and Hierarchies were different; for the Laws were rather *figura Reipublica* than *forma*, rather Bonds of Perfection, than Entireness; that our Common Laws were not in force in *Ireland*, *Jersey*, *Gernsey*, and the Isle of *Man*, and yet they had the Benefit of Naturalization.

To which it was reply'd, That these were only Rhetorical Flourishes, for God, who was the only disposer of all his Creatures, kept them in order and obedience to himself, by a Law which they could not deviate from, unless he withdrew his preserving Hand from them; but between Man and Man, or Nation and Nation, there could be no such Tye or Obligation to hold an Union where they



they had various Laws and Priviledges. And for the Immunities given to the *Irish* for some Ages past, they were *English* Colonies sent thither, being a great part of them Native with us, of the same Blood and Stock, with whom they were ingrafted by time, and made as it were one Body, the better to secure their Obedience, and hinder any League or Amity with a Foreign Nation: But *Scotland* had an entire Union with the *French*, continued for some hundreds of Years, which was indissoluble, and therefore not yet compatible with the Freedoms of *England*. When they had as much experience of the Friendship of *Scotland*, as they shew'd the *French*, they should incline to a more intimate Union; Besides, there was an inequality in the Fortunes of the two Nations, and by that Commixture, there might ensue advantage to them, and less to the *English*.

To the latter part it was answered, *Beatius est dare quam accipere*; and *Edward* I. among his other Virtues and Excellencies, both in War and Government, was famous for none more then for his design in his Conquest of *Scotland*, since he did not bend his Undertaking for Glorious Acquests abroad, but solid Strength at home, which if it had succeeded, could not but have brought in those Inconveniencies, that do arise from the commixture of a more opulent Kingdom, with a less; for 'twas not the Yoke either of Laws or Arms, that could alter the nature of the Climate, or Soil, neither was it the manner of the Commixture that could alter the nature of it; and therefore if it were good than for *England*, it must be so now; and not to be valued the less because we paid not so dear for it.

They strove farther to prove, That the Benefit of Naturalization was by Law, to as many as  
X 2  
were

were or should be born, since the King's Accession to the Crown; for there was no more than to bring the *Ante-nati* into the degree of the *Post-nati*, that Adult Persons might not be in a worse Condition than Children, and elder Brothers in no worse state than younger. If any objected the Laws were not so, but that the *Post-nati* were Aliens as well as the rest, it was contrary to the reason of the Law, the Wisdom of the Common Laws of *England* being admirable, in distribution of the Benefit, and perfection of the Law, according to the several Conditions of Persons. The degrees were four; two of Aliens, and two of Subjects.

The first Degree was of an Alien born under a King or Republick, which was an Enemy; now if such an one came into the Kingdom without a Pass, it was at his peril, the Law giving him no Protection, neither of Body, Lands, nor Goods, so that if he were slain there was no remedy by any Appeal at the Parties Suit, tho' she were an *English* Women, notwithstanding at the King's Suit the Case may be otherwise, in regard of the Offence against the publick Peace.

The second Degree was of an Alien born under the Faith and Allegiance of a King, or Commonwealth, that is a Friend; now unto such an one the Laws affords greater Benefit and Protection in Things personal, transitory and moveable, as Goods, Chattles, Contracts and the like, but not in an Estate of Inheritance, and the Reason for it, is, because he may be an Enemy tho' he is not; for the Government under which he was born, may enter into a War against us, and therefore as the Law has but a transitory assurance of him, so it rewards him with transitory Benefits.

Now the third Degree is of a Subject, who having

ing been an Alien is made free by Charter and Denization, to whom the Law affords greater Privileges, such as Power to purchase a Free-hold Estate to his own use, as also entitles his Children, born after his Denization to Inherit; but yet he cannot make a Title or deduce any Pedegree from any Ancestor paramount, for the Law does not think fit to put him in the same degree with a Native-subject, since his Affections cannot so well be settled by any Kindness, as when from Men's Birth they are inbred and Inherent. But for the fourth and present Degree, it is of such a Person that is neither an Enemy nor can be so for the future, and therefore the Law allows him the full Benefit of Naturalization; whereupon it was urged that if these were the true Steps and Paces of the Law, no Man could deny but whoever was born under the King's Obedience, never could *in aliquo puncto temporis*, be an Enemy, and therefore in Reason of Law was naturaliz'd; so tho' the *Scots* seemed to be in Reason *Naturales ipso Jure*, yet it was not superfluous to have it done by Parliament, for it would shew the World our Affection unto them, and good Agreement with them.

Then they shewed by the Authority of History and Experience, the Inconveniencies that might arise, in case this Union of Naturalization did not close and bind up the Veins, and so as to make it one perfect Body; for else it might be apt to open and break out again upon all Occasions, and relapse to the detriment of both; and they instanced in the Wars of the *Romans* and *Latins*, which were occasioned meerly for want of this Union, and were never quiet till they enjoy'd it; as also between the *Peloponessians* and *Spartans*.

They also produced more modern Examples in this Kind, as in the Kingdoms of *Aragon* and *Castile*,



## Of the Union of two Kingdoms.

*stles*, United in the Persons of *Ferdinand* and *Isabella*, severed and divided from the rest of *Spain*, in Priviledges, and directly in this point of Naturalization, or Capacity of Inheritance; the Consequence whereof was, That a Rebellion arose among them, which a Royal Army with difficulty suppressed, and they being made one incorporated Body, with the rest of *Spain*, perpetuated Peace to Posterity. To this they added another Instance between *Florence* and *Pisa*, and said, That whatever Kingdoms and States had been united, and the Union corroborated by the Bonds of Naturalization, they could never be observed afterwards to disunite or sever again upon any occasion, whereof divers Provinces of *France* by time annexed to that Crown, were farther Witnesses.

Next they proceeded to shew, the Benefits that should accrue there from, would be Security and Greatness; security, by stopping up the Postern-Gates of our Enemies, so that we should not be so much a Temptation to the Ambition of Foreigners, when their Approaches and Avenues were taken away; for having had so little success when they had these Advantages, they would have less Comfort when they wanted them: Greatness by this Union must needs follow, for having so many Iron-handed Men in these three Kingdoms, we should not only be able to pluck Gold from the (once poor) *Spaniards*, and *Indian-Mines*, but keep the whole Christian World in awe by our Arms.

But these Arguments not prevailing of themselves, the King thought fit to try what he could do with both Houses, whom he sent for to the Banqueting-House, and there laid before them, That the Union he desired was of Laws and Persons, such a Naturalization as might make one Body of both Kingdoms; that as there was but *Unus*

*Rex*

*Rex*, so there might be but *Unus Grex* and *Una Lex*; his Intention was not (as some vainly alleadg'd) to give *England* the Labour and Sweat, and *Scotland* the Fruit and Sweet, it being idle to talk of transplanting Trees out of a barren Ground unto a better, and lean Cattle out of a bad Pasture into a more fertile Soil. Could any Man supplant them unless they would? Or was *Scotland* so strong as to pull them out of their Houses? Whereas the least Grounds in *Scotland* would rather be planted by Swarms of People, then cumber the Streets in *England*. Then he desired,

1. That all Hostile Laws should cease, seeing the King of *England* could not make War with the King of *Scotland*.

2. That there should be an intercourse of Trade, he being no Stranger but descended of their ancient Kings, and how could he be natural Liege-Lord to both, and they Strangers to one another? And should they who were under the same Allegiance, be no freer, nor have any better respect than *French Men* and *Spaniards*.

3. They all agreed they were no Aliens, and yet would not allow them to be Natural; that he was informed by their own Judges and Lawyers, at his first Accession to the Crown, that there was a difference between the *Ante* and *Post* Natives of each Kingdom, which caused him to publish a Proclamation that the *Post-nati* were Naturalized by his Accession; but he confessed, Judges might err, and so might the Lawyers on their side; therefore he admonish'd them to beware to disgrace either his Proclamations or the Judges, for so they might disgrace both their King and Laws, who had Power when the Parliament was ended, to try them both for Estates and Lives.

He also proceeded yet farther, saying, for some

Men who with their flattering Speeches would have the *Ante-nati* preferred, alledging their Merit in his Service, such discourses had *mel in ore & fel in corde*, carrying an outward appearance of love to the Union, but a contrary Resolution in their Hearts; for he would have them know it lay within the Compass of his Prerogative, to prefer whom he pleas'd to any Dignity, Civil or Ecclesiastical; but he was so far from prejudicing the *English* therein, that he was willing to bind himself to reasonable Restrictions; besides, it was a special Point of the King's Prerogative to make Aliens Citizens, and in any Case, wherein the Law was thought not to be clear, *Rex est Index*, for he was *Lex loquens* supplying the Laws, where it wanted; but this he spake, as knowing what belonged to a King, and not intending to press it farther than might agree with their Affections, and stand with the Conveniency of both Nations.

Here he took upon him to state the Inconveniencies that might be supposed to arise from *Scotland*.

1. An Evil Affection in the *Scots* to the Union.
2. That the Union was incompatible.
3. That the Gain was little or nothing.

Now if Things were so why was there any talk of an Union for the first? they alledg'd the averiness of the *Scots*, from the Preface and Body of their Act, wherein they declared they would remain an absolute and free Monarchy, and not alter the Fundamental Laws of the Kingdom; and yet at the beginning of that Session of Parliament, the Opinion was current, that *Scotland* was greedy of the Union, and pursued it with so much violence, that they cared not for the strictness of the Conditions, so that they might attain the substance and End, and yet they now said they were backward,



ward, which was a Contradiction; for how could they both own and deny the same thing, at one and the same time? And by preserving their Fundamental Laws, they meant those Laws by which Confusion was avoided, their King's Succession and Monarchy maintained: To which he declared, that he was in Descent three hundred years before Christ, not meaning as they did, their Common Law; for the *Scots* had no Law but that which was *Fus Regis*: And for their desire of continuing a free Monarchy, he hoped they meant not that he should put Garrisons upon them, as the *Spaniards* did over *Sicily* and *Naples*.

Then he told them, That he governed *Scotland* with his Pen, he wrote and did more by a Clerk of the Council, than others would do by the Sword; and tho' he knew there were divers seditious Persons in that Kingdom, that might talk lewdly enough, yet none of them ever spake dishonourably of *England*, as they had done of *Scotland*; for if any Man spake unbecomingly there, the Chancellor by his Authority interrupted him; but here they had Freedom to speak what they list, and as long as they pleas'd, without Contradiction. Then he proceeded to shew what the Laws of *Scotland* were; and

1. Those which concerned Tenures, Wards, Liveries, Seignories and Lands, were drawn out of the Chancery of *England*, brought into *Scotland* by *James I.* who was bred up in *England*, and differed only in Terms.

2. The Statute-Laws, to which he hoped they would be no Strangers.

3. The Civil Law, brought out of *France* by *James V.* and served only to supply in such Cases where the municipal Laws were defective, so that he hoped it was no hard Matter to unite the People

ple together, who were in effect already subject to the same Law. And whereas it was objected that the King of *Scotland* had not a Negative Voice in Parliament, but must pass the Laws agreed on by the Lords and Commons, he assured them in the first place that the Form of Parliament there, was nothing inclined to Popularity; for about twenty days before the Parliament began, Proclamation was made through the Kingdom, that all Bills to be exhibited that Sessions should be delivered to the Master of the Rolls by a certain day; then they were brought to the King, perused and considered by him; and only such as he allowed were sent into the Chancellor's Hands, to be propounded that Parliament, and no other; and if any Man spake of any other Matter than was in the Form first allowed by him, the Chancellor told him there was no such Bill allowed by the King: And when they were past for Laws, he ratified and confirmed them, first rasing out what he did not approve of; and if this might be called a Negative Voice in Parliament, then he had one.

2. As for the Union between the *French* and *Scots*, which made this Union so incompatible; he assured it was a League only made between the Kings and not the People; for *Scotland* being solicited by *England* and *France* at once, for a League Offensive and Defensive against each others Enemies, there was a great distrust maintained in favour of *England*, that they being our Neighbours joined in one Continent, a strong and powerful Nation, it would be more Security to the State of *Scotland* to join in Amity with *England*, than *France* divided from them by the Sea, where they must abide the hazard of Wind and Weather, and other Accidents that might hinder Relief.

But

But on the contrary it was alledg'd in favour of *France*, That *England* ever sought to conquer *Scotland*, and there would never be kept any sound Amity between them; whereas *France* lying more remote claimed no Interest, and therefore would be found a constant and faithful Friend, so it was concluded on their part; but by the Tenor it was ordered to be renewed and confirmed from King to King successively, by the Mediation of their Embassadors, and therefore meerly personal; and so it was renew'd in the Queen his Mother's time, not by Assent in Parliament, which it could not have wanted if it had been a League of the People; and in the King's time when it came to be ratified, because it appear'd to be in *odium tertii*, it was by him left unrenow'd, in consideration of his Title to the Crown of *England*.

3. For the Profit and Conveniencies that should arise to *England* by this Union, who could be so ignorant as not to know the Gain would be great? Did they not gain by the Union of *Wales*? And was not *Scotland* greater than *Wales*? Should not Lands, Seas and Persons, be added to their Greatness? Two Snow-balls put together grew greater, two Houses joined made one the larger, and two Castle-Walls made into one, made one as thick and as strong as both; and he professed he sought this Union only to advance the Greatness of their Empire here in *England*, yet with such Caution as might be consistent with the Welfare of both States; what was now desired had often been sought for and not obtained, to refuse it then now were double Iniquity; and for their Security in such reasonable Points of Restriction, which should be agreed to, they needed not to doubt his Inclination, for he would never say any thing he would not



not promise, nor promise any thing which he would not swear, nor swear any thing which he would not perform.

*Resolution.*

But notwithstanding all these Arguments and Flourishes made by the King and his Party to induce the Parliament of *England* to agree to the Union with the *Scots*, yet they apprehended so many and such great Inconveniencies in such an Union, where the Laws and Government were of a different nature, that nothing could bring them to comply with it.

*Event.*

That the King and his Party remained very uneasy hereupon, and never left till they got in about two years after this, part of their Point gained, viz. when the Lord Chief Justice *Coke*, Lord Chancellor *Ellesmere*, and most of the Judges of *England*, in the *Exchequer* Chamber gave their Opinions in favour of the *Post nati*, in that famous Case called *Calvin's Case*; and so the Matter has remained ever since.

*Judgment.*

Such an Union as was here proposed, provided the same were moderated and qualified with proper and good Clauses, must necessarily redound to the Advantage of both Nations: The Instance given of that between *Wales* and *England* argues strongly for it; and no doubt if the Representatives of the whole Island sat at *Westminster* (as they

they once did) but Things might be managed and carried on much more to the Advantage and Grandeur of the Kingdoms; neither is there an impossibility of bringing this about still, when his present Majesty has lately, as well as at his first Accession to the Crown, moved for it: However, there seems to be one Difficulty now in the way more than in former days, and that is a greater difference between the Religion of the two Nations in respect to Ecclesiastical Hierarchy than formerly, when both Nations were under Episcopal Jurisdiction; but yet this seems not to be insuperable, and one should think such Expedients (if Men went heartily about it) might be found out for the Security of both Religions, that there might be no room left to fear any Innovation.

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C A S E

## CASE LXI.

*What Caution is necessary to be used in settling of the Terms of an Amnesty; especially how are those Crimes to be exprest, which we would have abolished by the Amnesty? Lastly, what must be universally regarded in order to make an Amnesty the more firm?*

THE Citizens of *Milan*, after they had for some time stood out in Rebellion against *Lewis XII. King of France*, were at length inclined to submit to him upon safe and honourable Conditions; and therefore there was a general Act of Oblivion published without any manner of exception: But King *Lewis*, after the making of that Act, entred *Milan*, put divers of the chief Citizens to death, who had been guilty of the more heinous Crimes, and were notorious beyond the rest; hereupon, it was debated between the *French* and Citizens of *Milan*, whether the Fact was lawful; and whether the Benefit of the Act of Oblivion ought not to have been extended to all manner of Offenders?

*Opinions.*

1. The People of *Milan*, with much eagerness, alledged, the Fact was unjust, and objected, That the publick Faith, and the impunity which was once promised, and granted by it, ought to be kept.

2. If



2. If the *French* proved no better Observers of their Articles and the Rules of Justice, the People of *Milan* would think, that they themselves also were not bound by those Laws and Agreements entred into for the establishing of the *French* Government over them.

The *French*, on the other Hand, argued otherwise, and said, Matters were quite contrary than what was surmised; saying,

1. That the Conditions of an Amnesty, or Act of Oblivion, are applicable to the time wherein they are enacted, and not to any other time after they are enacted; that the obstinacy of Subjects put Princes frequently under a necessity of granting them, and in so doing they seem as if they pursued their real Intentions, or what was just to be done; and therefore when opportunity offered, the Thing might afterwards be reputed null and of none effect.

2. They added farther, That those Persons whom they had punished had been very heinous Offenders; and therefore they ought not to be allowed an equal share in the Benefit of the Act of Oblivion with the rest. Those who had been guilty of lesser Crimes, and been the followers of others, deserved Pardon rather than Punishment; that enormous Crimes, not particularly specified, notwithstanding a general Act of Oblivion, might always be punished; neither was that against Law: For it could not be presumed, that Princes who were Lovers of Justice could pardon those Offences, with whose impunity the safety of the Government was not consistent, that an Act of Oblivion did not comprehend whatever was committed, but whatever could be pardoned, and that all the Extensiveness thereof ought to be restrained to that which is just, and consistent with all the Rules of Equity imaginable.

3. Nay,

## *Of the Violation of an Act of Oblivion.*

3. Nay, the Law it self, and even the Government had their certain Forms, and by their not being always exprest neither, was to be understood, that what had been done by the Magistrate thro' Fear or Force, could be set to rights again : And thus in the administration of publick Affairs, those Things which were constituted in time of Peace, are for the most part abrogated in War, and so the contrary ; just as you find it in the sailing of a Ship, some Things are of use in good and others in stormy Weather.

### *Resolution.*

The *French* therefore resolved the Punishment inflicted by them was just, and thought the People of *Milan* had no Grounds to recur to the Articles of the Amnesty for their Protection.

### *Event.*

As to the Consequence of this Proceeding, the Citizens of *Milan* received but very little Advantage from the fore-mentioned Act of Oblivion.

### *Judgment.*

An Act of Oblivion of all Injuries, &c. upon the terminating of a Civil War is very proper. *Thrasibulus*, upon the expulsion of the Tyrants, was the first that advised the *Athenians* to this, which Law alone is able to reduce a Government that has been shaken and in a tottering State, to its ancient Splendor after a Civil War, and the Difficulties thereof ; for those Evils, as *Tertullian* says, which befall a Nation by a Civil War, and  
come

come in lieu of those that happen by Deluges and Storms of Hail; and therefore to be continually revenging and keeping them in remembrance, is the way to cherish and increase them; and as the same Author says, As Boys are chastised to good purpose, if we dissemble a great deal, if we take divers Things, tho' otherwise true, for false; and if lastly, we think fit to forget many; so after Civil Wars, every one is best reduced to his Duty, if we not only do not call past Things into question, but not allow even the remembrance of them: In the mean time you must know there are many Crimes pardoned in a publick Pacification, for the sake of avoiding a greater Evil for the present, which after the Pacification are punished or past by, according to the Heinousness and Inhumanity of them. And this has been frequently done, as appears by History, whereof in the first place take an Example from the practise of the *Romans*.

*Sylla*, notwithstanding the Law made against *Ruffians* and Cut-throats, excepted those that slew *Marius* his Followers, or had received Mony out of the Treasury for bringing in the Heads of the Citizens of *Rome*, in pursuance to the Law made for proscribing them. And tho' the Senate confirmed all *Sylla's* Acts, yet when *Figulus* and *Julius Caesar* were Consuls, *Julius Caesar* in his Pleadings upon the Account of some *Ruffians*, put them among the number of *Ruffians*, who at the Command of *Sylla* slew three of the proscribed Citizens.

For what can be more inhumane, than to let their Wickedness go unpunished, who according to the Rules of Justice and Equity, ought to be punished with the utmost severity? So Princes think it Prudence for the present to grant them Pardon by way of an Amnesty, but in the mean



time it is in their Power, and they have Authority, as time and occasions serve, to inflict a due Punishment upon them; and this was not only a practice of ancient times, but done of latter Years, and almost in our Days.

In the times of the Civil Wars in *France* in the preceding Age, tho' all Crimes were obliterated and forgiven by the Edicts of Pacification, yet did not the Parliament, according as they saw fit, in regard to the true nature of Things, take upon them to declare themselves upon many Things, whether they were contained or not in the Edicts? And it has sometimes been objected to them, that the publick Faith, in that Case, ought altogether to be regarded and observed; the Answer was, That it was to be kept, in case it was particularly given to any one; but when given in general Terms, that then it was to receive such an Interpretation as was most like to Reason, and that none of either Party would at any time excuse or defend those most heinous Crimes, for which some Persons after the enacting of the Amnesty, were punished.

Seeing therefore Princes, in this Case, have so much Power, and that those Things which they do even against the prescript of an Act of Oblivion, does seem indeed to be consonant to Justice, Subjects who would be reconciled to their Princes, indeed ought to use the utmost Caution, least they should be rather deceived with the shew of an Act of Oblivion, than have the real Benefit of it.

There are therefore three Things to be warily observed in this Case, tho' perhaps they do not quadrate with the State of all Governments.

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1. You must take care, that none be excepted, let the Crime be what it will, for others may easily be circumvented under the same pretence of guilt.

2. All Crimes, that can be objected, are particularly to be exprest.

3. They ought also to prest for and exprest the abolishing of all that Right and Authority, which may be of use and advantage to the Act of Oblivion.

For there can no greater Safety arise (after a Crime Committed) from a present Law or publick Favours, than the abrogating of all that particularly and in exprest Terms, which may obviate the present Law or Kindness, and make it useless: And so the observance of the three Rules before mentioned, will render the Act of Oblivion safe and indubitable; and when 'tis once enacted in this manner, the Prince has no more Power to punish his Subjects in such Cases.

## C A S E LXII.

*What Caution is to be used least publick Counsels and Opportunities of managing Affairs be lost, under pretence of a long Treaty, spun out on purpose by the Commissioners of the opposite Party?*

**A**fter the first Commotions and Tumults in the Netherlands, the Spaniards and Dutch treated divers times about reconciling their Differences; for which end they called divers Meetings or Assemblies, wherein the Spaniards constantly did this, That they protracted the time by long Debates,

and at length made no Concessions, and so in the mean time would deprive the *Dutch* of proper Opportunities to carry on the War, and establish their Liberty: At length they met once more at *Breda*, where the Deputies of both Parties being present, those for *Spain* insisted upon having all Things, acted and examined in Order. That order consisted herein, when private and particular Things, which were Impediments to a general Reconciliation, were first dispatch'd and removed out of the way; and than they would treat about establishing a general Friendship and Unity, between the Parties. Which when the *Dutch* Deputies understood, who had been often so amused, they debated among themselves, whether it was convenient they should proceed in that manner in this Conference?

### *Opinions.*

Some were for agreeing with the advice and Method of the *Spaniards* herein; for the Rules of Order did require, That they should first treat of Things past, then to come, especially since the former might prove an Impediment to the other; neither could they fully treat of a Reconciliation, without those Impediments were first removed and taken away; and therefore they ought first to treat of this.

Others opposed this, saying, it signified nothing to observe this Method, without they arrived by the observance thereof at a just and the designed end; which if they did suppose was not to be attained to, to what purpose should they have so many Deliberations and Altercations about other Matters? And what would the Consequence be else, but the present losing of the present Opportunities,



tunities, which otherwise might have been better improved?

Liberty of Conscience in Matters of Religion was the end they aimed at, and it signified nothing to talk of other Matters, or to have all the rest granted them, without this; and therefore they were in the first place to ask the *Spanish* Deputies, whether they had Power to reconcile all Differences with the Safety of their Religion, and Liberty of Conscience? If so, all Things might be treated of in order: Neither could they then doubt but all Things must terminate well; but if otherwise, it signified nothing to transact all other Matters in order, for Opportunities in the mean time would be lost, and nothing at last done by that Congress, which they had had sufficient experience of already.

*Resolution.*

This last Opinion they agreed to as the best and most advisable to follow; and therefore they asked in the first place, before they would enter upon any other Matters, whether the *Spanish* Deputies had Power to allow of Liberty of Conscience.

*Event.*

Hereupon they came presently to know, that they were not impowered to do that; and therefore the *Dutch* Deputies departed forthwith, that so they might not be impeded by the protracting of time, but make use of other Occasions that presented themselves against the *Spaniards*, and assert the Liberty of their Religion.

## Judgment.

By how much the seldomer good Opportunities offer themselves, so much the more they are to be minded; but Enemies and Adversaries for the most part endeavour to spoil them, under a pretence of offering Peace, and spinning out of their Debates to a great length. What is to be done in this Case? Certainly a Christian scarce ought to refuse Meetings offered him to Treat of a Peace: And while a Peace is treated of, either all Acts of Hostility are to cease till the Peace is made; or if they have otherwise agreed on't, they are in order to prevent the losing of Time and Opportunities by dilatory Debates and Consultations, to demand to be informed by the Deputies of the adverse Party, whether they have Power to grant those Things which we think to be wholly our due, and which we neither will nor can be without; and lastly, without which, the granting of all the rest will signify nothing; but if they have no such Power, why should not they at the very beginning of their Meeting leave them, as Persons insignificant to their purpose, and rather noxious to them than otherwise. In this Case it is the highest Prudence, and much Time and divers Opportunities may be gained, by lifting out at first, what is like to become of the main Thing for which the Assembly was appointed. And herein the *Dutch* acted very cautiously and advisedly.

CASE

C A S E LXIII.

*How some Affairs may so fall out, as not to be proper to come under the Cognizance or Deliberation of the whole Assembly; and what the Part and Business of a good President is upon that Occasion.*

THE Duke of *Alençon*, Brother to *Henry III.* of *France*, being a Prince of an ambitious and turbulent Spirit, was very much suspected of a Design to raise a Civil War in the Kingdom, against the King his Brother; for it was not only commonly reported every where, but the Duke threatned it, and began already to list Soldiers: In the mean time it hapned that the Duke writ a Letter to *Christopher St. Thou*, who was President of the Parliament, wherein he endeavoured all he coald to set forth unto him, the Justice of his Cause, and to draw him to espouse his Interest and Party.

*M. St. Thou* being perplexed herewith, invites some of the faithfulest of his Friends in Parliament, to come privately to his House, in order to consult with them thereupon; and the Question was, Whether it was at that time convenient to read over the Contents of the Duke's Letter in the full Parliament, and to ask their opinions upon it, or not?

*Opinions.*

There were some for having them read in full Parliament, saying,

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*Cautions for a President of an Assembly.*

1. That the Letter was directed to the Parliament, — and therefore ought to be delivered to them; that the President alone did not constitute the Parliament but the other Members, and therefore he alone ought not to claim that for himself which appertain'd to all.

2. That it was the Business of that same Assembly to take Cognizance of Controversies, not only between the People but also the Princes of the Blood-Royal and so to consult thereupon what was most agreeable to Justice and the publick Peace; Why then should this be denyed the Duke of *Alençon*?

3. Neither could they see any Danger or Disadvantage therein; for either all the Members of Parliament would disapprove of the Duke of *Alençon*'s Design's, or some of them would approve of it; if all disapproved of them, the Authority of the whole Parliament would render that of the King better over all the People, and the Duke's Cause worse and Interest less; but in case some of them favoured him, it behoved the King as well as the Parliament, to know who were the secret Favourers of the Duke's Designs, for they could be better aware of those that were known, than of secret Conspirators.

But M. *St. Thou*, who was one of the gravest, wisest, and best men of his time, opposed all these Arguments, saying,

1. That the Letter indeed was directed to the Parliament, but the Subject thereof was not fit for the Cognizance of Parliament, and was injurious to the Common-wealth; and therefore it might justly be accounted as not written to the Parliament at all. It was to be understood that the Magistrate was not to be appealed to, unless a due respect was had to him by the Appellant; and therefore those Letters

Letters and Appeals were rejected in well-Constituted Governments, wherein there was the least defect in the Title of Princes or Magistrates; and if this was done in respect to Titles only, how much greater respect should be shewed in an Argument? Which if it was not just, for the good of the Government, and without the Crime of dividing the Parliament into Factions and Parties, it ought by no means to be allowed of and exposed. Transgressions had their Punishments assigned them, and the Punishment of evil and unjust Suits or Appeals, sometimes was to reject them, and not to hear the Party.

2. That it was true indeed the Cognizance of such Causes did appertain to the Senate, but yet there were some Things which ought not to be brought upon the open Stage in a Government, and they were secret Contrivances against the King and Government: If therefore it was not lawful to be concerned therein, without becoming guilty of Treason, so neither was it proper for them to enter into a Debate thereupon.

3. For to do that, was no more than to make a Doubt whether the Matter in Hand was just or unjust; for Debates or Deliberations only related to dubious Matters, but they neither could nor ought to doubt, that a Civil War was to be raised against the King.

4. They knew there were pretty many Persons in the Parliament that favoured the Duke of *Alençon*, and so had as little regard to the King's Interest as to the publick Tranquility; but it was better for them now not to give them any opportunity to approve of the Duke's Cause in the Parliament: For by this means they should find the Parliament openly divide into Parties; and what would be the consequence of that but a distracted Govern-

Government? For when the People came to understand into what Parties the Parliament, their Chief Court of Judicature, was divided, they would immediately follow. For so the Poet says,

*Scinditur incertum studia in contraria vulgus.*

especially if they find and understand there is an Authority accompanying the chief Persons engaged in those Factions.

5. It would be a better way to deliver the Duke of *Alençon's* Letter to the King than to the Parliament; to the King, that he might take care of himself in time, after he had once known the Designs of his Enemies, and so bethink himself of seasonable Methods, whereby he might either stop or suppress the intended Insurrection: Not to the Parliament, least it should give Birth at the same time to the King's care of securing the publick Peace, and to the Endeavors of those Members of Parliament who favoured the Duke of *Alençon*, forthwith to disturb the publick Tranquility.

6. Lastly, It was the President's Business not only to lay Matters as they came before the Senate, and to require their Resolutions thereupon; but also to take diligent Heed to what was to be laid, and what not before them; and therefore as for those Things which were against Law, that appertained to the Cognizance of another Magistrate, that in themselves and at first sight were unjust, that tended to lessen the Parliament's Authority, to raise Commotions, disturb the Parliament, and the like; the President neither could nor ought to lay it before the Parliament: And now then as for the Purport of the Duke's Letter, it was no other than a Seminary of Tumults and Commotions.



*Resolution.*

They agreed not to lay the Duke of *Alençon's* Letter before the Parliament, but to deliver it to the King.

*Event.*

The Consequence was that they were not divided into open Factions, so as that the Duke might take advantage of the Authority of some of the Members, which was of great moment to him; and hereby the King had an opportunity to take care of his Affairs, when they who were the Duke's Favourers in Parliament were not now animated by his Letter to take to the other Side.

*Judgment.*

M. *St. Thou's* Judgment and Management was very good in respect to the Government and distracted Times they were in; those Things are not to be debated in a Government, which are unjust to be thought of; neither are they also to enter into a Debate concerning Things that tend to Tumults among those who desire nothing so much as an opportunity to disturb the Government.

And therefore we are here in general to observe, That it ought to be a particular Foresight in the President and his principal Care to judge aright, what Matters are to be laid before the Assembly, and what are not proper to be so; and as to those Things that ought to be laid before them, he must consider when they are most conveniently to be done, and of what Principles and Disposition they are, before whom they are to be laid: Its  
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therefore his business now and then either not to lay the business before the Parliament, or to defer the giving them an account of it to a more proper season. For this is a great matter, and makes up the principal part of a good President's Office. The same or like method was always used by the *Dutch* States at the beginning of the Civil Wars and Tumults in those Countries: For seeing there were some amongst the Magistrates of the respective Cities who favoured the Government of the King of *Spain*, and others for recovering their Liberties, and that several caresting Letters were sent to them by the King, wherein they were promised a better Government; the Presidents and those who were best affected to the liberty of the People, for the most part thought fit wisely to conceal the said Letters in their Assemblies, and from the People.

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#### C A S E LXIV.

*Whether it be a sufficient Excuse for an Offender against the Government, to shew that the Cause of the Offence was not in him, but in another.*

THE *Rhodians* having ordered some Embassadors to go to *Athens*, to transact some Matters of State with those People; and not receiving from the Treasurers, as they ought to have done, those Necessaries requisite for the defraying the Expences of the Embassy, within the time limited to them for their Departure on the Embassy, they did not set out on their Journey; and therefore they were upon this account accused  
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of a great Default, and the *Rhodians* entred into an hot Debate what they were to do with those Embassadors.

*Opinions.*

The Embassadors who thus stood accused, urged nothing, but that the Treasurers had not supplied them with the Allowances assigned them by the Government in due time ; and therefore it was not their fault that the Embassy was delay'd, but the Treasurers, it being not they but the others that had impeded the Embassy ; and therefore none ought to be punished for another's Crime.

But the Accusers, and most of the Magistrates of *Rhodes* affirmed the contrary ; saying,

1. That the Crime of the Treasurers, if there was any in them, did not belong to the present Case, but theirs alone who stood accused, was to be determined. Every one was to mind his own business ; and tho' they had been tardy, the Embassadors ought not to have been so : If they had done amiss, an accusation might be also formed against them apart, for their accusation was not to be conjoyned with the Defence of these.

2. For tho' it were granted that the Treasurers had offended, it did not therefore seem that the Embassadors had less offended ; Now they ought rather to have set forward on their own Charge, then so far as lay in them to betray the Commonwealth ; for the Government, to which we are bound by the Obligations of Nature, and otherwise, and to which those persons by accepting of an Embassy, had more bound themselves, could have made them satisfaction with an overplus for the Charges they had been at out of their own Fortunes.

3. More-



334 *Publick Ministers not to excuse their Crimes, &c.*

3. Moreover they should at least have informed the Magistrate of the contumacy and neglect of the Treasurers, which as the Embassadors had neglected, they could not be exempt from a fault; for it was not enough for those who were entrusted with publick Affairs, to alledge by way of defence, that others had impeded them in their Duty, if they themselves had not endeavoured all they could to take away and remove the same.

4. He that takes a publick Character upon him, and undertakes to execute the Commands of the Government, and such as he thinks cannot be deferred, but must necessarily be done, cannot and ought not to seek to excuse his not doing the Business, or executing the Command, by being hindred one or another way from doing of it: There were different ways of Transacting things; Those Matters were committed to the industry of those who were intrusted with the discharge of them. Those persons who are commanded by a Government, to do a thing that is necessary to be executed without any farther delay, seem to have been commanded all; for the Embassadors were to do all that lay in their power for the accomplishment of so necessary an Embassy, notwithstanding the Treasurers default in not supplying them with necessaries for their Journey.

*Resolution.*

The Accusation seemed to be just, and the Embassadors were cast.

*Event.*

Those who were intrusted with the Management of publick Affairs, would for the future be excited to use more care in the discharge of them.

*Judg-*

*Judgment.*

Undoubtedly the Embassadors Cause was so much the worse, and they were deservedly Convicted, because they made no Protest against the Treasurers. As long as there are other ways of doing a thing, its not a sufficient excuse for a person that has failed in the execution of the Trust reposed in him, to alledge he was hindred by this or that thing, for a due care of the Commonwealth includes all his Duty.

But we are otherwise to judge of Matters, if, as it sometimes happens, some certain and definite way of acting or proceeding is appointed by publick Authority.

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C A S E LXV.

*After what manner in the Administration of a Government, amidst different Counsels (for each of which there is some reason) we are not always to chuse that for which the strongest Reasons do appear; but especially that which the present state of Time and Things does require, and such as is best put in Execution.*

**W**Hen the Tumults in the *Netherlands*, occasioned by the Tyrannical Government of the King of *Spain's* Governors, began to increase more and more, the Duke of *Alva* was at length sent by the King to Command in those Provinces, at what time it was principally debated in the King's Council, whether was most advisable for them

them to use severity towards the People as before, or to deal more gently with them.

*Opinions.*

Some were for making use of the gentler way, as being preferable before the other ; saying,

1. That the nature of the *Netherlanders* was such, that they could not be contained within the bounds of their Duty, but by a gentle Government, and with the safety of their liberty ; and that was looked upon to be the best method of Government, which was accommodated as much as possible, to the Manners and Constitutions of Subjects.

2. That the severity which the King had hitherto made use towards the People had done no good ; and therefore it was best for them to try other and contrary remedies, according to the Example of Physicians, who when their first Medicines have failed of success, are wont to make use of other Remedies, and often quite contrary ones for the Cure of their Patients. That that obstinate humour signified nothing when a Government Nursed the same Counsels, whereby it had hitherto reaped no manner of benefit.

The Duke of *Alva* was of the contrary Opinion, and thought the *Netherlanders* ought to be used more severely than ever ; saying,

1. That he confess'd the Disposition of the People ought to be regarded, and that that of the *Netherlanders* was such as was very prone and inclinable to Licentiousness, and to violate the Government of their Princes under a shew and pretence of Liberty ; and therefore it was highly necessary that they should be restrained therein by severe Edicts, and a constant execution of them ; for to  
use



use them gently would be no other than a provocative to them to become more refractory and audacious, of which they had already shew'd but too much.

2. That a People who did not love their Prince, were to be kept within the bounds of their Duty by fear: To cherish them, and to use them gently, was no other than to hate themselves, and the hatred of the *Netherlanders* towards the *Spaniards*, already but too manifest, was not to be doubted of.

3. That indeed they had hitherto done no good by their methods of Severity; but the reason of that was not in the severity it self, but in them who had hitherto been Governors of the *Netherlands*, who were too remiss in acts of Severity and Punishment, that had not been great enough, or proportionable to the stubbornness of the People, who as they daily grew more and more insolent against the King and his Commands, why should they not be treated with greater Severity for the future?

4. Again, if they should exercise a more gentle Government over them than they had done before, the King's Authority must totally sink, and the vigour of the Edicts already published decline; That when once the obstinate humour of the Subject comes to be gratified, there was a way thereby opened to make them always averse to obey; besides it was not consistent with the King's Authority that they should remit any thing in the most severe execution of the Edicts.

5. *Lastly*, That part of the *Dutch* had already Revolted, that the rest was contriving how to do it, and to follow the others Example; those who contrive a Revolt, have already done it; and why should not they now who contrive to use force, and incommode others, be retained in their Duty

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by force ; for the mildness and modesty of a disarmed Government, could not be a sufficient remedy for the preserving of it, and opposing those, who were already partly in Arms.

### *Resolution.*

The Arguments of the Duke of *Alva* were looked upon to be the more weighty and prevailed in the Council of *Spain*, who approved of them.

### *Event.*

The Tumults in the *Netherlands* were increased by that Severity, and whole Provinces under the Duke of *Alva's* Government, Revolted from *Spain*.

### *Judgment.*

There are none indeed that can deny, but that the advice of the Duke of *Alva* carried weighty Reasons with it ; for if we mind them rightly, each of them is considerable : But in the mean time they did not do well, neither was it for the Interest of the King of *Spain*, to take that advice, the reason whereof, if any should ask me, I should give no other than this ; That it was an easier matter in a Debate to approve of this advice of the Duke of *Alva*, and the Reasons thereof, than in that state of Time and Things, to put the same to purpose in execution ; therefore publick Counfels are not simply to be weighed by the Reasons given for them, but the possibility or impossibility of the future execution of them ought seriously to be considered : That is better which is less approved

ved of, and you are able to execute, than that which you the more approve of, and cannot execute. The *Netherlanders* were now too strong to be oppress'd or broken ; and the Duke of *Alva* had not power enough in the *Netherlands*, to bring the advice he gave to have its desired End, by keeping up and increasing the Severity formerly used towards them.

Finally, Those who are at the Helm of Government, and want Counsel, ought to hold this for an Eternal Rule, That they should not only have a regard to the strength of the Arguments produced, but in following this or that advice to regard their own ability ; and if they find themselves too weak for them, it will be a point of the highest prudence in them to prefer the lesser before the greater Counsels.

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C A S E LXVI.

*When is it, after the breaking out of Civil Wars between a Prince and his Subjects, that Pacifications are to be made, and what care ought to be used in drawing them up.*

AFTER the first Wars between the King of Spain, and the States of the *United Provinces*, they agreed in order to the preventing any more Civil Troubles to come to a pacification at *Ghent* in *Flanders*, whereby there was sufficient Provision made for the security of the *Dutch Liberties* : It was signed by both parties, and stiled the Pacification of *Ghent*. But when the same came afterwards to be infringed by various Artifices, the Civil Wars broke forth again ; in order



to the appealing of which, there was a Treaty set on Foot at *Colcgn* in the Year 1579. by the Mediation of the Emperor, and other Princes of *Germany*; where when the King and the States Embassadors were met, there were several Forms proposed for a Pacification, and they had hot Debates concerning each of them.

### *Opinions.*

The *Dutch* Embassadors, who alledged, their Liberties had been invaded, proposed the following Articles for a Pacification.

1. There is a perpetual Act of Oblivion or Amnesty granted by both Parties, of whatever has been done by any means and in any place, both generally as well as specially and particularly, from the first breaking out of the Tumults, and for the sake of them; so as that there shall be no more mention made of them or Inquisition or search after them.

2. That the King shall be satisfied with, and hold good whatever shall be done, agreed on, appointed, decreed, concluded, provided, or any ways done by *Matthias* Arch-Duke of *Austria*, and the States General and Particular, as well what concerns War as Peace.

3. The King promises to Ratify, and by these Presents does Ratify, not only all the Privileges, Rights, Customs, and ancient Usages of each Province, State, City, and Territory; but also will consent and allow, That all the Provinces in General, and every one of them in particular, may and shall enjoy the privileges granted to *Brabant*; to wit, That all the states shall be free, and not bound to stand to the Oath of Allegiance, if the King shall not observe the foresaid Privileges, Customs,

Customs, and Usages ; according to the Rule of which Privilege, if it happen'd that the same Privileges, Customs, and Articles confirmed by this Pacification, shall be infringed, the Provinces in General are to be looked upon discharg'd of their Oath : They shall be free to chuse them another Governor or Prince, as they shall think fit, as well because all the Provinces in this respect enjoy an equal Privilege , as also because the Oath and Obligation of the Prince and People is Reciprocal.

4. All Foreign Soldiers on either side shall within Six Weeks time depart out of the *Netherlands* ; the Prince of *Parma*, the *Spanish* General in the *Low Countries* shall forthwith forsake the Towns and Places which he holds and detains since the pacification of *Ghent*, or which he lays Siege to or Assaults for the present ; and instead of those Forreign Troops, those Towns and Fortresses that require it shall be guarded with Native Soldiers ; who besides their Oath of Allegiance to the King of *Spain*, as Prince of the Country, and their lawful Sovereign, shall also swear to be faithful to their Country, to the States General and Provincial, and more particularly to observe the Articles of this Pacification.

5. Prisoners on both sides shall be discharged without any Ransom.

6. And because Count *Bueran* the Prince of *Orange's* Son was seized and carried away by force out of the City and University of *Lovaine* in the *Netherlands*, into *Spain*, contrary to the privilege of so illustrious an University , as well as the Dutchy of *Brabant*, the said Count shall forthwith be set at Liberty, and sent to *Antwerp* within two Months after this Pacification.

*Pacifications for the terminating of*

7. Every one of each party shall be restored to the possession of all his immoveable Goods, notwithstanding any Alienation made of them since the Pacification of *Ghent*, as also to their Moveables that are not wasted or alienated.

8. All persons that during the Calamities of the Times have withdrawn themselves into Foreign parts, may, if they please, return again to the *Netherlands*, upon condition that they swear to be faithful to the King, States of the Country, and to the observance of this Pacification.

9. The Pacification of *Ghent* shall be carefully and inviolably observed.

10. As to those matters in any of the Cities, Provinces, or Places, which regard the Reformed Religion, *Augustan* Confession, or Peace of Religion, all things shall remain in the state they are in at present, so that neither party shall innovate nothing; in the granting of which, no difficulty should be made, because otherwise it would be impossible to find proper Remedies for the Establishing of the Peace to follow, and publick Tranquility; and if any one should press for any other method to be observed, this would be no other than to give occasion for fresh Commotions.

11. The general Government of the *Low Countries*, shall remain in the power of the Arch-Duke *Matthias* upon those Conditions he has sworn to observe; and in case he should die, or happen to be removed some where else, it shall not be free for the King of *Spain* to chuse another Governor, but such as shall be pleasing to the States, who shall be bound to swear to the observance of those Laws and Conditions, which the Arch-Duke *Matthias* took upon his coming to the Government of the *Netherlands*.



12. None for the future shall be admitted to be Governors of Provinces, Cities, Forts, and Castles, to be Colonel, or other Officers in the Army; nor to be admitted to the Council of State, and other publick Employments of Moment, but such as are Native *Dutch*, fit for business, and who during the time of the War took the part of the States: And Lastly, such as are pleasing and agreeable to the Cities and Provinces wherein they are to Exercise their Functions, and who shall also solemnly swear to observe this Peace, and maintain the Privileges and Customs of all Places.

13. And because the *Netherlanders* have fallen into these Calamities and Miseries arising from the War, which was occasioned by *Don John* of *Austria*, the infringer of the privileges of the *Low Countries*; and that the States also have been compelled to pay great Sums of Money to the Colonels, Captains, and Soldiers in the Army, which the King ought to have done, with hopes that the publick Peace of the *Low Countries*, might thereby be maintained; the King of *Spain* shall restore the said Sum, which they paid the Soldiers, which amounts to a million of Crowns, and the said King shall discharge the States from all other Obligations by which they have been engaged to the said Soldiers, because the Conditions upon which they were entred into, have not been performed.

14. And because the States are oblig'd to the Queen of *England*, for her Friendship, Neighbourhood, Good-will and Assistance received from her for the publick Good; she shall be reciprocally comprehended within this Treaty for the Conservation of the ancient Amity that was always held between the Kings and Queens of *England*, and the Governors of the *Low Countries*.

15. In like manner the Duke of *Anjou*, the *French* King's Brother, shall be comprehended in this Peace, as being the Defender of the Liberty of the *Netherlands*, as are likewise comprehended all the Allies of the said States.

16. This Treaty shall be confirmed by the solemn Oath of both parties, and be Ratified by the King of *Spain* within Two Months space in a solemn manner. The States Embassadors gave a Copy of these Articles to those of *Spain*, desiring that after having maturely considered every part, they would change what they thought convenient, and in that manner transmit them again to the States Embassadors, that they might also in their turn examine them: But the *Spanish* Embassadors refused this, and thought it better to have a new form of Pacification drawn up; for if they should here and there change any words in the Articles offered by the States, their Artifices would be discovered by the least change, and their Designs be so laid open, that it must necessarily interrupt the whole Affair of the Pacification. For Example; amongst other Articles preferred by the Embassadors of the States, one was, That no Soldier but Natives, and such as were pleasing to the States, should be put in Garrison in their Cities. Now those words, *pleasing to the States*, did not please the *Spaniards*; who if they expung'd them out of the Articles, the States would not agree thereunto, and so they would become suspicious of all the *Spanish* Designs: It seemed therefore advisable to draw up new Articles, wherein those words should be left out; for this being omitted in the new Writing or Instrument, would not so easily be seen and taken notice of, as if razed in the old one already given in.

For they understood they ought narrowly to observe any thing that should be struck out of another's Writing; for seeing none are supposed to strike out or change any thing here without great Cause, those whose Forms are altered ought to think they have the greater reason why they should not be willing to change them. And this is universally to be regarded, when Parties are Treating of Articles of Agreement.

After this the Embassadors of the States desired that those of *Spain* would subjoyn their own Articles, as they would have them, to each of those given in by them, or give their Explanation of every one of them; for by that means their Debates on either side upon each Article would be so much the easier and less obscure.

But this the *Spaniards* refused to do also, for as Contraries (according to the Philosophers) when set one against another, do the more clearly appear, so the Crafty *Spaniards* well saw, that if they should add, oppose, or subjoyn each of their Articles one by one to those of the States, the Embassadors of the States would so much the more Cautiously compare them together, and the more easily animadvert upon the Alterations made from their own.

They therefore chose rather, and the *Spaniards* thought it more advisable, to draw up new Articles, and to give them in to be examined apart, by not adding them to or subjoyning them with the Articles of the States: For they thought by this means they should more easily circumvent the Embassadors of the States.

Wherefore the *Spaniards* gave in another Draught of the Pacification, wherein their Articles did not orderly answer those of the States, whereby the Embassadors might find it more difficult



cult and obstruce to compare them together ; and those Things which in the same Instrument they thought fit to grant and consent to, they amplified with many Words, and used a much more prolix Form than the States, whereby they might imbroil the Embassadors of the States, and make them less heedful of other Things: But the *Spaniards* at last being altogether unwilling to agree to the Articles in Debate, they made use of Restrictions in those Forms: For Example.

The Article about the Act of Oblivion they expressed at large, and did so enlarge upon it beyond States, that there might be no occasion by any means left for the creating of Diffidence in Men's Minds about it : But that all manner of Fear and Scruple arisen, or which might arise within them, might be utterly rooted out and abolish'd, the King's Majesty was pleas'd to declare there should be a General Oblivion on both Sides, of what ever had hapned since the very beginning of the Tumults in the Country, so that the Memory of them passing away, might be so buried, as if they had never been ; and strictly forbid not only all Advocates, Lawyers, and other Officials, but even all publick and private Persons whatever, that they should not presume for the future to molest or sue any Body upon account of what had past before the said Act of Oblivion, &c. with a great deal more in very ample and express manner to the same purpose.

The *Spanish* Embassadors did also use certain doubtful Forms in the said Instrument, whereby those Things which they seemed now in shew to allow of and grant, they could, after the making of the Pacification, elude and render of none effect as having not been granted at all by them. For Example.

The

The Article for observing the Priviledges of the Provinces of the *Netherlands* was conceived in these Terms.

The King seriously promises his Vassalls and Subjects for the future, to keep and maintain, nay, if need be, to confirm anew, all and singular their Rights, Customs, Usages, Immunities, Exemptions, and Priviledges of the Provinces, Cities, Communities, and other private Men, both generally and particularly, as they did and have enjoy'd the same, at the time when his Majesty was heretofore solemnly inaugurated, and promised the same to the said Provinces; and in case at any time those same Priviledges should suffer any Infraction or Violation, there shall be nothing more readily done by him, than the restoring of the same to their pristine Strength and Vigour. Indeed, when any one considers this Article he will at first sight think it exactly quadrates with that exhibited by the Embassadors of the States for that purpose: In the mean time there is a Snake in the Grass; and the States-Embassadors discovered this Cheat; for tho' it did in reality contain the same in it as the States desired, yet they were not pleased with, but entertained a just suspicion of the Restriction conceived, and exhibited in these Words, *As they did enjoy them.*

I say they had just Cause to suspect this; because that after the Pacification made with the *Dutch*, there would be a Dispute about the enjoyment or not enjoyment of their Priviledges; and by such a Convenient opportunity, they thought the King of *Spain* might raise new Controversies.

Wherefore they thought it better to leave out that dubious Form of Expression, which tended to the raising of new Differences, and, as in their Articles make the observance of their Priviledges to be

be general and every way full, without proposing or admitting of any such Restriction: They also in the same Instrument given in by the *Spaniards*, by leaving out but one word, which was used by the States, made void all the other Concessions that had been granted. For Example,

The Article which was made about the Soldiers that were to Garrison the *Dutch* Towns, was drawn thus: Whereas the King formerly, tho' against his Will, because of the Tumults and Commotions made in those Times was necessitated, to bring Foreign Troops into the Country, for the supporting of his Authority there, yet having a Fatherly Regard to the Burdens and Difficulties of his Subjects, he will presently after the Publication of the Peace, command all Foreign Soldiers whatever, without any farther delay, to depart the *Dutch* Provinces, and the Native Soldiers of the Country shall be substituted in their Room, and keep guard in their Cities and Fortresses.

Herein also the Embassadors of the States, who were cautious and upon their Guard, found that by leaving one Word out of their request, that not only all the Benefit they were to receive by that Article would be eluded, but also whatever was granted them by all the rest: For the States proposed that they should not only Garrison their Cities with Soldiers that were Natives; but such *as were pleasing and acceptable to the States*, which last Clause was omitted by the *Spaniards*; but the whole Basis of the Pacification was grounded here-upon: For any Native-Soldiers that the States did not like nor they them, would be rather inclined to enlarge the King's Power, than to defend the *Dutch* Liberty, and so be as bad as any Foreign Soldiers or Enemy; and therefore the States were fully resolved to stand by their own Articles in this Case.

More-



Moreover, there were some Articles contained in that same Instrument exhibited by the *Spaniards*, which were so cunningly drawn up, as to make those Things which seemed to be certain, uncertain; and after the enacting of the Pacification there was more room left for the King's Interpretation, than there was Provision made for the Security of the States. For Example; the Article about ratifying whatever had been done by *Matthias* Arch-duke of *Austria* and the States during the War, was drawn up and conceived in these Terms.

As for those Orders, Disquisitions and Acts made by Arch-duke *Matthias* and the States, from the time of the last Tumults under his Majesty's Government, tho' it was notoriously known, that for want of a just Authority they could by no means have Energy and Strength; yet his Majesty, in order to promote this Reconciliation doth agree, that the same shall be accounted lawful and valid, and have their due Effects, in respect to the advantage of Dignities, Offices and other Things, which were wont to be in the Power and common Disposal of those who acted as Governors of those Provinces; but not to such Things as were reserved only for his Majesty's Person, or any thing against the Rights, Priviledges or Immunities of the Country, as well in general, as special or particular.

The Embassadors of the States saw that the Power of the Pacification to be made, was impugned and altogether infringed by that Article; and therefore they refused to enter then upon the Dispute, whether the Grants and Orders of the Arch-duke *Matthias* and the States, wanted a lawful Authority to back them: This was a Question belonging to another place; but this they were only

ly minded to take notice of, that this Article was wholly contrary to the Pacification, whereby a World of Squablings and Contentions must arise between the King and the People; for the avoiding of which, they thought nothing could be more advantagious to the King or Common-wealth, than if the Article exhibited by the States for that purpose in the Form thereof, were inserted in the Pacification, and religiously observed.

The States also observed in the Instrument of Pacification offered by the *Spaniards*, that there were some Articles which were not obligatory, wherein the Offices rather than Duties of the King of *Spain* were exprest; whereas in the mean time no Pacifications can be certain and of established Force, unless the Parties be necessarily oblig'd to do every thing not as 'tis a point of Office in them, but according to the Tenor of their Articles.

### *Resolution.*

As the *Spaniards* refused to satisfy the just Demands of the States, and the necessary Cautions of their Embassadors, they thought it their part to refuse to sign the Pacification.

### *Event.*

Thus it came to pass, that the Republick of the *Dutch* obtained a greater Security by continuing the War, which would not only have been ruined by the treacherous and unjust Articles of the Pacification, but also have utterly lost any future opportunity of recovering their lost Liberty again.

*Judg<sup>s</sup>*

*Judgment.*

They that are called to the management of publick Offices and Employments, have here more than one Thing to observe and take notice of.

1. In making Articles of Pacification we are advised to take diligent Heed to them, and the Form of drawing them up, about the expressing of which this or that way, the Parties we have to do with, are very intent and stiff.

2. We are to take in such a Pacification that it do not obtain the Name only, but the Strength it ought to have; and this may be done, by striking out, rejecting or altering the Form of Expression, or more clearly explaining of the Thing, which after the signing thereof, may be doubted or controverted.

3. In the making of such Articles there is nothing to be left to the Judgment or Will of the Parties, but all Things are to be referred to undoubted and constant Forms, and their inevitable Rule. For if any thing be left to the Will of the Parties, they will not be subjected to a necessity of observing the Pacification, but the same must be subjected unto them, and they will infringe and alter it at their pleasure, and as occasion serves.

4. Lastly, Those Pacifications are by no means to be agreed on, whereby the Parties seek to get more by Peace than War.

C A S E



## C A S E LXVII.

*How are Taxes to be contrived and laid upon the People, so as to be the least and almost no Burden unto them, and yet be beneficial to the Government.*

THE States-General of the United Provinces, when engaged in that long and most expensive War against the *Spaniards*, stood in need of a great deal of Money to carry the same on; now the Revenue of the State was no other than what was brought into the publick Treasury out of each Province, and these were raised from certain Impositions and Customs laid, which at the first were received in all the Provinces. But this afterwards was looked upon to be unjust, and that because of the different Condition of each Province: For Example; seeing the Land in the Province of *Gelders* was not so good and fruitful as that of *Holland*, they thought it unjust to pay so much for an hundred and ten Foot of Land in *Gelderland*, as they did for the same quantity in *Holland*, which was a much more fertile Soil. It was therefore agreed by common Consent of the States, that they should have regard to the Largeness and Wealth of each Province, and that a certain Sum of Money should be laid upon every one of them, which they were yearly to pay into the Treasury, and which they called *Quota*. For Example, if an hundred thousand Florins were to be paid into the Exchequer, the *Quota* of *Holland* was sixty thousand Florins, *Zealand* ten thousand, and the rest of the Provinces some

land ten thousand, and the rest of the Provinces some more some less, as they were more or less rich; and so the States of every Province was at liberty, to take what Methods they pleas'd, and seem'd most expedient for their Province, in laying the Impositions, whereby they might answer their *Quota* to the Government, as had been agreed generally between them.

The States of *Holland* therefore, finding the Impositions laid upon Merchandize to be very heavy, and yet that they were not enough neither for defraying the Charges which daily grew upon them, they began to think of some new Methods, and by a publick Edict invited any of the Subjects to make their Proposals, with the Promise of a large Reward to such as should find out a way of raising Taxes that might be less burdensome to the People, and more useful to the Government.

*Opinions.*

At last there came some crafty and projecting Person who invented a Tax upon Stamp Paper, which in *Dutch* they call *De Impost van bezegeld Brieven*, being so much Mony to be paid for every Stamp to the Government, as 'tis at this day in *England*.

His Project was, that it might be enacted by publick Authority; that no Petitions, &c. unless they were Stamp'd, should be received by the States, Magistrates of any Cities or other Places, Judges of Courts, or any other publick Authorities; no Law-proceedings allowed of but upon Stamp'd Paper or Parchment, and no Acquittances given by Receivers of the Revenue, or other Writings made by Notaries, Scriveners, Lawyers, and the like Persons: And lastly, that no such Instru-

*The Equality of Taxes discussed.*

ments should be received in Courts, without being so Stamp'd, and so much Money paid for every one of them, in proportion to the Nature, Quality, Bigness or Smalness of the Matters contained therein.

Now this Invention took with the States,

1. Because this would be but a small Burden upon the Subject, in comparison of other Things.

2. Because the poor and meaner sort of People would, as it were, be free and exempt from the Charge, seeing they had little or no occasion for such sort of Businessses and Writings, wherein such Paper should be used.

3. That this would bring a great deal of Money into the publick Treasury, seeing there would be much of such sort of Paper used by the Wealthier Citizens, who had Contracts to make, and many Law-Suits depending.

But there were some of the number who opposed this Project, and thought it no good way of raising Money; saying,

1. That such Stamps might be easily counterfeited by private Persons, and difficult to detect the Cheat; and therefore it would be easy by this means to divert and prevent the Design of such an Imposition.

But to this it was answered, That that Counterfeiting might be prevented, if the Secretaries or Notaries in each City subscribed their Names to each Stamp, for it would not be so easy to counterfeit anothers Hand as a Seal or Stamp.

2. That private Men would often be counterfeiting the Stamp of the Government; this was no other than to accommodate the publick Authority to the Iniquity of the Argument.

But to this it was answered, That there was a great difference between putting the Stamp of the States



States at the bottom of the Writing, and to put it at the side of the upper part thereof.

If the same were put underneath, it seemed to confirm the Words written therein; but if placed in the Margin of the upper end, it would be a Mark of nothing else but Paper belonging to the Publick, which was of necessity to be made use of, for writing of those Things which were to be brought before the Magistrates, Judges and other Persons in Office in the Government. And therefore it was better the Stamp should be placed in the Margin at the upper end of the Paper.

*Resolution.*

The States thought fit to approve of the Project, and make use of it as a way to raise Money for the Necessities of the Government, as we in the time of the late War have done in *England*, and this Project we must have from *Holland*.

*Event.*

The Subjects also were pleas'd, at leastwise not dissatisfy'd with it, seeing what they were to pay for such Stamps was but a *Modicum* compared with other Things; but it brought a great Income to the Government every Day, because of the constant use of it.

*Judgment.*

Indeed it was an ingenious Invention, and which may easily be practis'd in any Government; for there was nothing but the Authority of the Publick to enact, and no Subject can well scruple to pay the proportion assign'd by it, when he has any such occasion for it.

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And certainly if Matters were duly weigh'd, there might be many other Things found out of the like nature, that might be of use in the Necessities of a Government; and indeed the forementioned Project has been vastly improved by our own Government, by the Act for Stamp'd Paper and Parchment, beyond what the first *Dutch* Project ever thought of: But after all, its best for any Government where there is the least occasion for such Projects and Taxes to be set on foot.

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C A S E LXVIII.

*How those Taxes are chiefly to be approved, and readily allow'd of, which are imposed not so much under the Name of the publick Necessities, as for reforming the corrupt Manners of the Age.*

**T**HE Republick of *Holland*, in former times, being prest for Mony to supply the publick Necessities, bethought themselves of laying some new Tax or other upon the People; and among other Things propos'd, it was debated, Whether it would not be convenient for them to lay some Tax upon those who were litigious and apt to go to Law for every Trifle; under the Denomination of reforming Men's Manners, seeing there were so many litigious Suits and Causes daily brought before their Magistrates and Courts of Justice?

*Opi-*

*Opinions.*

Some thought it an unjust Thing; seeing it was Punishment enough for the Plaintiff, or he that sued another to lose his Cause; and that they ought not to add Affliction unto Affliction.

2. They were generally in laying of Taxes to consider, That those who were in a flourishing State and Circumstances ought chiefly to be Subjected to them, and that those Methods ought to be avoided, as much as possible, which equally oppress both Rich and Poor; and most of all those, which would be a Burden only to Men of a mean and miserable Circumstances. But they were miserable who lost their Cause, why then should a Tax be laid on them alone? Nay, it seemed more just to lay it upon those litigious Persons who gained their Causes, than upon these.

3. This Tax ought not, or could not be laid upon the Litigious in a way of punishment; for here there seemed to have been no such Harm done, which might deserve Punishment; for if any Cause or Controversy does arise between private Persons, that puts them upon going to Law, they are many times not so much Enemies to Justice, as they are ignorant of the Law; and why then for the terminating of their Differences, should not they have recourse to the Skill and Authority of the Judges or Magistrates? For it could scarce be discerned, who the Party was that went rashly and litigiously to Law, for that was wholly concealed in his Mind, because if it be wicked, he seems to prefer a litigious Law-suit in Court. Then for any ones being cast in Law, he appears rather to have sued unsuccessfully than litigiously; upon whom then and



why should this Tax be laid on any by way of Punishment?

4. And indeed if any thing was to be laid on them, they were to consider it was Punishment enough that those who were cast in Law should be condemned to pay the Costs, which were heavy and burdensom enough.

Others opposed these Arguments; saying,

1. That Affliction was not here added to Affliction, for we ought not to think that Person to be afflicted, who obtains not the thing he seeks, upon no other Account but because it's not his due. If any Man ought to be accounted afflicted in this Case, he must either be the Judge who is perplext with determining those rash and litigious Suits; or he whether Plaintiff or Defendant, whose Right is uncertain and controverted.

2. It was in vain to offer here, that the Miserable or Poor were not to be burdened with Taxes; for the Litigious Persons of those times, which were very numerous, were commonly wealthy; a poor Man seldom or never proved litigious, since he had or would pretend to nothing, about which he should contend with another Person; why therefore should not they pay such a Tax for a Punishment, who deserved to do it and were able to bear it?

3. For the Punishment was justly put upon them; for it appear'd by the Event, that they not only Lawed unhappily, but also unjustly, and with an ill Design; for in case they had not gone to Law against Right, which is the Thing insisted upon, they would not have been cast in Court, seeing 'tis the part of the Magistrate to defend every Man's Right, and administer Justice.

4. Nei-

4. Neither was it Punishment enough for them to be constrain'd to pay the Charges of the Suit upon their being cast, for this was done in favour of him who had got the better in Court, and who in a just Cause ought to be at no Charge, seeing that is occasioned alone by him who undertakes to prove and defend an unjust Cause; but this was not a full Satisfaction to the Government, which seemed to be injured by such litigious Suits; As a Thief is not looked upon to have suffered Punishment enough, if so be he restores the Thing stolen to his Master, unless also by the Example of another's Punishment he himself is either amended, or does amend others; So it is in this Case: For this Tax being laid by way of Punishment, others would be more cautious of preferring litigious Suits; seeing therefore this was done for the Reformation of Manners, and Good of the Government, why should it not be approved of?

5. Neither were they to look upon this as a kind of new Punishment, for they could not be ignorant what the *Roman* Law expressly contained against litigious Persons.

*Resolution.*

They therefore approved of and laid a Tax upon those that were Litigious, and the same was commonly called in their Language *De Impost van ongeson deerde processen*; and this is that which is paid by those who prosecute an unjust Suit, before the Burgomasters or Magistrates of their Cities, in their Courts of Justice, and of their Tribunals, and are cast, in proportion to the Greatness or Smallness of the Sum in Controversy, for Example, the same being rated and fixed according to the Course and Standard of their Coin.

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The Plaintiff, at his first preferring of his Suit is to pay that Money into the Hands of the Clerk of the Court, but if the Plaintiff gets the Cause, the Defendant and he that is cast, is forced to give him the Money which was pay'd by way of Tax to the Clerk of the Court.

*Event.*

This was inflicted as it were by way of Punishment upon the Litigious, whereof there was a great number, tho' all would scarce do, so corrupt are Men's Manners in all Ages: However it was a great help to the Government; for tho' both Ends could not be obtained, one by them at least was: Perhaps in the obtaining of the one, 'tis their Interest not to obtain the other.

*Judgment.*

The States were undoubtedly in the right of it here, and it were well we did so under just and wary Limitations; for 'tis just and laudable in it self, and none can take it amiss it should be used, as one Method for Reformation of Manners: Besides, none ought to take the payment of that Tax ill; which he is not oblig'd to do, unless he be imprudent and an unjust Person: And 'tis one of the easiest Taxes that can be.



C A S E LXIX.

*Whether is it lawful for a Prince to receive into his Protection the Subjects of another Prince oppressed by him in their Civil Rights and Liberties.*

**P***Hillip* the Second, King of *Spain*, oppressing his Subjects in the Provinces of the *Netherlands*, by invading their Civil Rights, and endeavouring to bring in the Inquisition upon them; they endeavoured as well as they could to stand up in the Defence of the former, and prevent the latter from being imposed upon free People, who were now also inclined to embrace the Reformed Religion; but being frequently worsted by the Enemy, and finding themselves reduced into a very distressed state, they resolved to apply themselves to *Elizabeth* Queen of *England* for Succour and Protection: Hereupon it was debated in the Queen's Council, whether the Queen should receive them into Protection or no.

*Opinions.*

Some there were who thought they were to be esteemed as Rebels, and unworthy of Assistance, as having shaken off their Allegiance to their Prince; and Argued,

1. That the *Spaniard* broke none of the Articles of his *Joyful Entrance*, which was the pretence they had used for their Rebellion, and Casting of their Prince; but if he had broken them, yet was he not liable for that reason to lose his Dominion;

minion ; and tho' some thought that Obedience was to be denied him for a time, till he had Reformed what he had done amiss ; yet others thought that by the Law of God, to which Human Laws ought to give Place, Princes were to be obey'd meerly for Conscience sake, as Powers ordained by God : That God had given them the Authority of Commanding, and left to Subjects the Commendation of obeying, that Good Princes were to be wish'd for, but whatever they were, they ought to be obey'd.

2. That those Provinces were devolved to the King of *Spain*, not by popular Election, but by Right of Inheritance from his Ancestors, and the Donation of Emperors.

3. That the *Netherlanders* themselves had received all the Privileges which they enjoy'd from Princes, and had forfeited the same again by their Treason, or formally taking up Arms against their Prince.

4. That they who now intended to crave Protection, were not the States of the *Netherlands*, but most of them of the common sort of People, under the pretence and name of the States, with whom it was not fit the Queen should meddle, but ought rather to strengthen and fortify her own Kingdom, to engage all her good Subjects daily more strictly to her by her Bounty and Clemency, to restrain the Bad, gather Money, furnish her self with all Naval Forces, provide the Borders towards *Scotland* with strong Garrisons, and maintain the Ancient Military Discipline of *England* ; so would her Kingdom become impregnable, and she on every side be secure at Home, and a Terror to her Enemies.

5. That

5. That it was the best way for those who had too powerful Neighbours to avoid and prevent War ; for no man would willingly provoke those whom he saw to be provided of Money and Strength, backed with the love of their Subjects, and ready and prepared to take Revenge ; It would therefore be an indiscreet part in them to spend Money and Soldiers, which were the vital Spirits of War, in a Foreign quarrel in behalf of other Princes, or Indigent States (and those Subjects to another Prince) who would always be expecting fresh Recruits ; or else out of Necessity or Ingratitude would at length provide for their own State and Security, and neglect their first helpers, whereof the *English* had heretofore Experience in *France* to their Cost in the Quarrel of the Duke of *Burgundy*, and not long before also in the Defence of the Protestants there.

Those of the contrary Opinion desired the Queen to consider (to which she was much disposed of her self.)

1. How barbarously cruel the *Spaniards* had been towards her Neighbours, the *Netherlanders*, and their hatred against *England*, and the Religion which she had embraced, of which they might dread the Consequence.

2. That as the *Spaniards* were certainly persuaded that the *Netherlanders* could never be reduced under their Obedience, unless *England* were first Conquered, so she should take care that the War might not be brought Home to her own Doors.

3. That *Scotland* was yet wavering, and that it was great prudence in her to endeavour to prevent the *Spanish* Power from growing and extending it self too far in the *Low Countries* so near adjoining to her, and for Situation so convenient both for Translating the War into *England*, and for



for the Trade of Merchants, as well by Sea as up and down the *Rhine*; as also for the prohibiting the carrying of all Provision for Shipping to the Enemy; they being Countries provided of strong and stout able Seamen, insomuch that by the Conjunction of them with the *English* Fleet, she might easily become Mistress of the Sea; and withal so rich and strong, that they had been able for a long time to curb their insulting Enemies without Foreign Assistance.

4. They desired her also to consider, if she persisted to refuse them Protection, they might put themselves under that of *France*, which would much derogate from her Glory, and be attended with many other Inconveniences.

5. That there was no scruple to be made of granting the States Protection, or entring into Articles with them for their Defence; that Leagues and Associations had been made in former Times, between the Kings of *England*, and the Princes of the *Netherlands*, and the Cities thereof apart, for yielding one another mutual Protection and Assistance; and why should it not be so now, when there was so much need of and just Cause for it, thro' the unjust Encroachments and Invasions of the *Spaniards* upon the Rights of the People?

### *Resolution.*

The Queen after serious Deliberation of the Matter, and weighing the Arguments on both sides, resolved to give her protection into the States, and enter into a League with them for that end, wherein she wisely took *Flushing*, *Ram-skins*, and the *Briel* for Cautionary Towns to secure the Charges she should be at in supporting of them.

*Event*

## Event.

The War was carried on with success against *Spain* in divers parts of the World, and the States by the Support and Assistance they received from the Queen, throve to that degree, and grew to such a Head in time, that they would not treat with the King of *Spain*, but as a free State ; and at length by the Peace of *Westphalia* were openly acknowledged to be so by them : Whereas the *Spaniards* by the vast Charge of this War with other concurring Causes fell from that envied height of greatness, whereby they overtopt all their Neighbours into the most abject state of Pity and Contempt, and their Neighbour Nation the *French* grew so fast upon the others Declension, that almost all the United Powers of *Europe* have not been able to support them in our days from falling under the *French* Yoke.

## Judgment.

It was certainly a very bold Action in the Queen to take upon her the Protection of the States, and thereby provoke such a formidable Enemy, as the *Spaniard* was at that time of day, to use his utmost Efforts to ruine her ; and this some of the Princes of *Europe* were as sensible of, as they did admire her manly Fortitude, insomuch that the King of *Sweden* said of her, that she had now taken the Diadem from her Head, and ventured it upon the dubious Chance of War. But it was without any doubt an act of no less prudence in her, when she saw *Proximus Ardet Ucallegon*, her Neighbour's House on Fire, to endeavour to keep the flame from catching her own, which  
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was in a great measure effected by the Diversion her Troops gave to the *Spaniards* in the *Low Countries*, and other parts of the World; neither ought any to call her Justice into Question, by giving assistance to Revolted Subjects, who were so sorely and inhumanly oppressed in their Religion and Liberties, when we our selves enjoy the like benefit at this Day by the coming of his present Majesty, to rescue the Nation from Popery and Slavery, that like a Torrent was breaking in upon us, when otherwise we seemed to be past all Human Relief.



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F I N I S.



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